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Vol. 5

A LEGISLATIVE HISTORY OF THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986 (PUBLIC LAW 99-499)

TOGETHER WITH

A SECTION-BY-SECTION INDEX

PREPARED BY THE

ENVIRONMENT AND NATURAL RESOURCES POLICY DIVISION

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I

99TH CONGRESS
1ST SESSION

H. R. 3852

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 4, 1985

Mr. WRIGHT (for himself, Mr. MICHEL, Mr. DINGELL, Mr. HOWARD, Mr. BROYHILL, Mr. SNYDER, Mr. ROE, Mr. STANGELAND, Mr. ECKART of Ohio, Mr. LENT, Mr. RODINO, Mr. FISH, and Mr. GLICKMAN) introduced the following bill; which was referred joinly to the Committees on Energy and Commerce, Public Works and Transportation, and Ways and Means

---

A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Superfund Amendments of 1985".

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SEC. 2. CERCLA AND ADMINISTRATOR.

As used in this Act—

(1) CERCLA.—The term "CERCLA" refers to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (52 U.S.C. 9601 et seq.).

(2) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

SEC. 3. LIMITATION ON CONTRACT AND BORROWING AUTHORITY.

Any authority provided by this Act, including any amendment made by this Act, to enter into contracts to obligate the United States or to incur indebtedness for the repayment of which the United States is liable shall be effective only to such extent or in such amounts as are provided in appropriation Acts.

TITLE I—PROVISIONS RELATING PRIMARILY TO RESPONSE AND LIABILITY

SEC. 101. AMENDMENTS TO CERCLA DEFINITIONS.

(a) USE OF TERM "PRESIDENT".—

(1) ADMINISTRATOR.—CERCLA is amended by striking out "President" each place it appears (except in subsections (e)(2) and (f) of section 301 and section 307(b)) and inserting in lieu thereof "Administrator".

(2) DEFINITION.—Section 101(2) of CERCLA (defining the term "Administrator") is amended by inserting before the semicolon at the end thereof the following: ", except as provided in subsection (b)".

(3) DELEGATIONS OF AUTHORITY.—Section 101 of CERCLA is amended by inserting "(a) IN GENER-

AL.—" after "101." and by adding at the end thereof the following new subsection:

"(b) USE OF TERM 'ADMINISTRATOR'.—

"(1) DELEGATIONS RETAINED.—Where, before the date of the enactment of the Superfund Amendments of 1985, any authority under this Act was delegated to the head of any other department, agency, or instrumentality of the United States (or where any such authority has been retained by the President), the term 'Administrator' refers to the head of such department, agency, or instrumentality (or to the President in the case of an authority retained by the President).

"(2) EXCEPTION FOR FEDERAL FACILITIES.—Paragraph (1) shall not apply to any authority delegated to a department, agency, or instrumentality with respect to any facility owned or operated by that department, agency, or instrumentality. With respect to such facilities, the term 'Administrator' when used in this Act refers to the Administrator of the Environmental Protection Agency.".

(b) RELEASE.—Section 101(22) of CERCLA is amended by inserting after "environment" the following: "(including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant)".

(c) REMEDIAL ACTION.—Section 101(24) of CERCLA (relating to the definition of "remedy" or "remedial action") is amended—

(1) by striking out "welfare. The term does not include offsite transport" and all that follows down through the semicolon at the end of such paragraph and inserting in lieu thereof "welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials;"; and

(2) by striking out "or" before "contaminated materials" and inserting in lieu thereof "and associated".

(d) RESPONSE.—Section 101(25) of CERCLA is amended by striking out "and" and by inserting before the semicolon at the end thereof the following: ", and enforcement activities related thereto".

(e) POLLUTANT OR CONTAMINANT.—

(1) DEFINITION.—Section 101 of CERCLA is amended by striking out "and" at the end of paragraph (31), by striking out the period at the end of paragraph (32) and inserting in lieu thereof "; and" and by adding the following new paragraph at the end thereof:

"(33) 'pollutant or contaminant' shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring; except that the term 'pollutant or contaminant' shall not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) and shall not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).".

(2) CONFORMING AMENDMENT.—Section 104(a) of CERCLA is amended by striking out paragraph (2).

SEC. 102. REPORTABLE QUANTITIES.

Section 102(a) of CERCLA is amended by adding the following new sentence at the end thereof: "The Administrator shall promulgate regulations establishing such reportable quantities for all hazardous substances by December 31, 1986.".

SEC. 103. NOTICES; PENALTIES.

Section 103(b) of CERCLA is amended by striking out "paragraph" in the last sentence and inserting in lieu thereof "subsection" and by adjusting the left hand margin of the text of such subsection following "federally permitted release," the third place it appears so that there is no indentation of such text.

SEC. 104. RESPONSE AUTHORITIES.

(a) PUBLIC HEALTH THREATS.—Section 104(a)(1) of CERCLA is amended by adding the following at the end thereof: "The Administrator shall give primary attention to those releases which he deems may present a public health threat.".

(b) RESPONSE BY POTENTIALLY RESPONSIBLE PERSONS.—Section 104(a)(1) of CERCLA is amended by striking out ", unless the President determines" and all that follows down through "party." and inserting in lieu thereof a period and the following: "When the Administrator determines that such removal and remedial action will be done properly and promptly by the owner or operator of the facility from which the release or threat of release emanates, or by any other responsible party, the Administrator may allow such owner or operator or party to carry out the removal or remedial action in accordance with section 122. The Administrator may permit the owner or operator of the facility from which the release or threat of release emanates, or any other responsible party, to conduct a remedial investigation to determine the nature and extent of the problem presented by the release or threat of release or a feasibility study of alternatives to remedy the problem presented by the release or threat of release only if the person conducting such investigation or study for the responsible party is qualified to conduct such investigation or study and is approved by the Administrator, if the Administrator enters into a contract with any qualified objective person to oversee and review the conducting of such investigation or study, and if the responsible party agrees to reimburse the Fund for any cost incurred by the Administrator under the oversight contract.".

(c) REMOVAL ACTION.—Section 104(a) of CERCLA is amended by adding at the end the following new paragraph:

"(2) REMOVAL ACTION.—Any removal action undertaken by the Administrator under this subsection (or by any other person referred to in section 122) shall contribute to the efficient performance of any long term remedial action to the maximum extent practicable with respect to the release or threatened release concerned.".

(d) COORDINATING OF INVESTIGATIONS.—Section 104(b) of CERCLA is amended by inserting "(1)" after "(b)" and by adding the following new paragraph at the end:

"(2) The Administrator shall promptly notify the appropriate Federal and State natural resource trustees of potential damages to natural resources resulting from releases under investigation pursuant to this section and shall seek to coordinate the assessments, investigations, and planning under this section with such Federal and State trustees."

(e) INITIAL OBLIGATION OF FUND.—

(1) LIMITATION.—Section 104(c)(1) of CERCLA is amended by striking out "$1,000,000" and "six months" and inserting in lieu thereof "$2,000,000" and "12 months", respectively.

(2) CONTINUED RESPONSE.—Section 104(c)(1) of CERCLA is amended by inserting before "obligations" the following: "or (C) continued response action is otherwise appropriate and consistent with the remedial action to be taken,".

(f) FACILITIES OWNED AND OPERATED BY STATES.—

(1) IN GENERAL.—Paragraph (3) of section 104(c) of CERCLA is amended—

(A) by striking out "and (C)" and inserting in lieu thereof "(C) the State will assure the availability of hazardous waste treatment or disposal facilities which (i) have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed, (ii) are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority, (iii) are acceptable to the Administrator, and (iv) are in compliance with the requirements of subtitle C of the Solid Waste Disposal Act; and (D)"; and

(B) by striking out the last sentence.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) of this subsection shall take effect on the date of the enactment of this Act, except that the amendment made by paragraph (1)(A) shall take effect three years after such date of enactment.

(g) STATE CREDITS.—Section 104(c) of CERCLA is amended by inserting the following new paragraph after paragraph (3) and by redesignating paragraph (4) as paragraph (5):

"(4) STATE CREDITS.—

"(A) GRANTING OF CREDIT.—The Administrator shall grant a State a credit against the share of the costs, for which it is responsible under paragraph (3) with respect to a facility listed on the National Priorities List under the National Contingency Plan, for amounts expended by a State for remedial action at such facility pursuant to a contract or cooperative agreement with the Administrator. The credit under this paragraph shall be limited to those State expenses which the Administrator determines to be reasonable, documented, direct out-of-pocket expenditures of non-Federal funds.

"(B) EXPENSES BEFORE LISTING OR AGREEMENT.—The credit under this paragraph shall include expenses for remedial action at a facility incurred before the listing of the facility on the National Priorities List or before a contract or cooperative agreement is entered into under subsection (d) for the facility if—

"(i) after such expenses are incurred the facility is listed on such list and a contract or cooperative agreement is entered into for the facility, and

"(ii) the Administrator determines that such expenses would have been credited to the State under subparagraph (A) had the expenditures been made after listing of the facility on such list and after the date on which such contract or cooperative agreement is entered into.

"(C) ADMINISTRATIVE EXPENSES.—The credit under this paragraph shall include amounts expended or obligated by the State or political subdivision for administration of this Act. The Administrator shall promulgate such rules as may be necessary to implement this subparagraph.

"(D) RESPONSE ACTIONS BETWEEN 1978 AND 1980.—The credit under this paragraph shall include funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 111.

"(E) STATE EXPENSES AFTER DEC. 11, 1980, IN EXCESS OF 10 PERCENT OF COSTS.—The credit under this paragraph shall include 90 percent of State expenses incurred at a facility owned, but not operated, by such State or by a political subdivision thereof. Such credit applies only to expenses incurred pursuant to a contract or cooperative agreement under subsection (d) and only to expenses incurred after December 11, 1980, but before the date of the enactment of this paragraph.

"(F) ITEM-BY-ITEM APPROVAL.—In the case of expenditures made after the date of the enactment of this paragraph, the Administrator may require prior approval of each item of expenditure as a condition of granting a credit under this paragraph.

"(G) USE OF CREDITS.—Credits granted under this paragraph for funds expended with respect to a facility may be used by the State to reduce all or part of the share of costs otherwise required to be paid by the State under paragraph (3) in connection with remedial actions at such facility. If the amount of funds for which credit is allowed under this paragraph exceeds such share of costs for such facility, the State may use the amount of such excess to reduce all or part of the share of such costs at other facilities in that State. A credit shall not entitle the State to any direct payment.".

(h) CROSS REFERENCE TO CLEANUP STANDARDS.—Section 104(c)(5) of CERCLA, as redesignated by subsection (g) of this section, is amended to read as follows:

"(5) SELECTION OF REMEDIAL ACTION.—The Administrator shall select the remedial actions to carry out this section in accordance with section 121 of this Act (relating to cleanup standards).".

(i) TREATMENT OF CERTAIN ACTIVITIES AS MAINTENANCE OR REMEDIAL ACTION.—Section 104(c) of CERCLA is amended by adding the following new paragraph after paragraph (5):

"(6) OPERATION AND MAINTENANCE.—For the purposes of paragraph (3) of this subsection, in the case of groundwater or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore groundwater and surface water quality to a level that assures protection of human health and the environment. Activities required to maintain the effectiveness of such measures following the completion of remedial action shall be considered maintenance.".

(j) COOPERATIVE AGREEMENTS WITH STATES.—Section 104(d) of CERCLA is amended by inserting "COOPERATIVE AGREEMENTS WITH STATES.—" after "(d)" and by amending paragraph (1) to read as follows:

"(1) IN GENERAL.—

"(A) STATE APPLICATIONS.—A State or political subdivision thereof may apply to the Administrator to carry out actions authorized in this section. If the Administrator determines that the State or political subdivision has the capability to carry out any or all of such actions in accordance with the criteria and priorities established pursuant to section 105(a)(8) and to carry out related enforcement actions, the Administrator may enter into a contract or cooperative agreement with the State or political subdivision to carry out such actions. The Administrator shall make a determination regarding such an application within 90 days after the Administrator receives the application.

"(B) TERMS AND CONDITIONS.—A contract or cooperative agreement under this paragraph shall be subject to such terms and conditions as the Administrator may prescribe. The contract or cooperative agreement may cover a specific facility or specific facilities.

"(C) REIMBURSEMENTS.—Any State which expended funds during the period beginning September 30, 1985, and ending on the date of the enactment of this subparagraph for response actions at any site included on the National Priorities List and subject to a cooperative agreement under this Act shall be reimbursed for the share of costs of such actions for which the Federal Government is responsible under this Act.".

(k) INFORMATION GATHERING AND ACCESS AUTHORITIES.—Section 104(e) of CERCLA is amended by redesignating paragraph (2) as paragraph (8) and aligning such paragraph with paragraphs (1) through (7) of such section, by inserting "CONFIDENTIALITY OF INFORMATION.—" before "(A) Any records", by striking out paragraph (1), and by striking out "(e)" and inserting in lieu thereof the following:

"(e) INFORMATION GATHERING AND ACCESS.—

"(1) ACTION AUTHORIZED.—Any officer, employee, or representative of the Administrator, duly designated by the Administrator, is authorized to take action under paragraph (2), (3), or (4) (or any combination thereof) at a vessel, facility, establishment, place, property, or location or, in the case of paragraph (3) or (4), at any vessel, facility, establishment, place, property, or location which is adjacent to the facility, establishment, place, property, or location referred to in such paragraph (3) or (4). Any duly designated officer, employee, or representative of a State under a contract or cooperative agreement under subsection (d)(1) is also authorized to take such action. The authority of paragraphs (3) and (4) may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant. The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this title.

"(2) ACCESS TO INFORMATION.—Any officer, employee, or representative described in paragraph (1) may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

"(A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.

"(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.

"(C) Information relating to the ability of a person to pay for or to perform a cleanup.

In addition, upon reasonable notice, such person either shall grant any such officer, employee, or representative access at all reasonable times to any vessel, facility, establishment, place, property, or location to inspect or copy all documents or records relating to such matters copy and furnish to the officer, employee, or representative all such documents or records, at the option and expense of such person.

"(3) ENTRY.—Any officer, employee, or representative described in paragraph (1) is authorized to enter at reasonable times any of the following:

"(A) Any vessel, facility, establishment, or other place or property where any hazardous substance or pollutant or contaminant, may be, or has been generated, stored, treated, disposed of, or transported from.

"(B) Any vessel, facility, establishment, or other place or property from which or to which a hazardous substance or pollutant or contaminant has been or may have been released.

"(C) Any vessel, facility, establishment, or other place or property where such release is or may be threatened.

"(D) Any vessel, facility, establishment, or other place or property where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this title.

"(4) INSPECTION AND SAMPLES.—

"(A) AUTHORITY.—Any officer, employee or representative described in paragraph (1) is authorized to inspect and obtain samples from any vessel, facility, establishment, or other place or property referred to in paragraph (3) or from any location of any suspected hazardous substance or pollutant or contaminant. Any such officer, employee, or representative is authorized to inspect and obtain samples of any containers or labeling for suspected hazardous substances or pollutant or contaminants. Each such inspection shall be completed with reasonable promptness.

"(B) SAMPLES.—If the officer, employee, or representative obtains any samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

"(5) COMPLIANCE ORDERS.—

"(A) ISSUANCE.—If consent is not granted regarding any request made by an officer, employee, or representative under paragraph (2), (3), or (4), the Administrator may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

"(B) COMPLIANCE.—The Administrator may ask the Attorney General to commence a civil action to compel compliance with a request or order referred to in subparagraph (A). Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, the court shall take the following actions:

"(i) In the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection.

"(ii) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents.

The court may assess a civil penalty not to exceed $25,000 for each day of noncompliance against any person who unreasonably fails to comply with the provisions of paragraph (2), (3), or (4) or an order issued pursuant to subparagraph (A) of this paragraph.

"(6) OTHER AUTHORITY.—Nothing in this subsection shall preclude the Administrator from securing access or obtaining information in any other lawful manner.

"(7) CLEARANCE.—Notwithstanding this subsection, entry to locations and access to information properly classified to protect the national security may be granted only to any officer, employee, or representative of the Administrator who is properly cleared.".

(l) REPEAL OF SECTION 104(i).—Section 104(i) of CERCLA is repealed. For related provisions, see section 116 of this Act.

(m) MANDATORY SCHEDULE.—Section 104 of CERCLA is amended by adding the following at the end thereof:

"(i) MANDATORY SCHEDULE.—

"(1) LISTING OF FACILITIES ON NPL.—The Administrator shall list not fewer than 1,600 facilities on the National Priorities List by January 1, 1988.

"(2) COMMENCEMENT OF RIFS.—The Administrator shall ensure commencement of remedial investigations and feasibility studies for all facilities listed on the National Priorities List in accordance with the following schedule:

"(A) 150 facilities during the first 12-month period after the date of the enactment of this subsection.

"(B) 175 facilities during the second 12-month period after such date.

"(C) 200 facilities during each 12-month period thereafter.

"(3) COMMENCEMENT OF REMEDIAL ACTION.—The Administrator shall take such steps as may be necessary to ensure that substantial and continuous physical on-site remedial action commences at facilities on the National Priorities List at a rate of not fewer than—

"(A) 125 facilities during the fiscal year beginning on October 1, 1986;

"(B) 140 facilities during the fiscal year beginning on October 1, 1987;

"(C) 160 facilities during the fiscal year beginning on October 1, 1988; and

"(D) 175 facilities during the fiscal year beginning on October 1, 1989.

"(4) COMPLETION OF PRELIMINARY ASSESSMENTS.—Not later than January 1, 1987, the Administrator shall complete preliminary assessments of all facilities which are listed, as of the date of the enactment of the Superfund Amendments of 1985, on the Comprehensive Environmental Response, Compensation, and Liability Information System list. Each preliminary assessment shall include a statement as to whether a site inspection is necessary and by whom it should be carried out.

"(5) COMPLETION OF SITE INSPECTIONS.—Not later than January 1, 1988, the Administrator shall complete site inspections at all facilities for which the Administrator has stated under paragraph (4) that a site inspection was necessary.

"(6) COMPLETION OF REMEDIAL ACTION AT EXISTING NPL FACILITIES.—The Administrator shall take such steps as may be necessary to ensure that remedial action is completed, to the maximum extent practicable, for all facilities listed on the National Priorities List, as of the date of the enactment of the Superfund Amendments of 1985, within five years after such date of enactment. If remedial action is not completed at such facilities within such five-year period, the Administrator shall publish an explanation of why such remedial action could not be completed within such period.".

(n) ACQUISITION OF PROPERTY.—Section 104 of CERCLA is amended by adding the following new subsection at the end thereof:

"(j) ACQUISITION OF PROPERTY.—

"(1) AUTHORITY.—The Administrator is authorized to acquire, by purchase, lease, condemnation, donation, or otherwise, any real property or any interest in real property that the Administrator in his discretion determines is needed to conduct a remedial action under this Act. There shall be no cause of action to compel the Administrator to acquire any interest in real property under this Act.

"(2) STATE ASSURANCE.—The Administrator may use the authority of paragraph (1) for a remedial action only if, before an interest in real estate is acquired under this subsection, the State in which the interest to be acquired is located assures the Administrator, through a contract or cooperative agreement or otherwise, that the State will accept transfer of the interest following completion of the remedial action.

"(3) EXEMPTION.—No Federal, State, or local government agency shall be liable under this Act solely as a result of acquiring an interest in real estate under this subsection.".

SEC. 105. NATIONAL CONTINGENCY PLAN.

(a) REVISION OF PLAN.—

(1) AMENDMENTS MADE BY THIS ACT.—Not later than 18 months after the enactment of this Act, the Administrator shall revise the National Contingen-

cy Plan (NCP) referred to in section 105 of CERCLA in order to reflect the amendments made by this Act.

(2) New response actions.—Any provision of the NCP adopted pursuant to any other provision of law which is inconsistent with the requirements of the amendments made by this Act shall not apply to response actions commenced, after the enactment of this Act, under CERCLA.

(3) Hazard ranking system.—

(A) Review of hazard ranking system.—Not later than 12 months after the enactment of this Act and after publication of notice and opportunity for submission of comments in accordance with section 553 of title 5, United States Code, the Administrator shall commence a proceeding to review the hazard ranking system in effect under the NCP. Such review shall assure, to the maximum extent feasible, that the hazard ranking system appropriately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review.

(B) Health assessment of water contamination risks.—In conducting the review under this paragraph, the Administrator shall ensure that the human health risks associated with the contamination or potential contamination of surface water, either directly or as a result of the runoff of any hazardous substance or pollutant or contaminant from sites or facilities subject to review, which are, or can be, used for recreation or potable water consumption, are appropriately assessed. In making the assessment required pursuant to the preceding sentence, the Administrator shall take into account the potential migration of any hazardous substance or pollutant or contaminant through such surface water to downstream sources of drinking water.

(C) COMPARISON WITH PRELIMINARY POLLUTANT LIMIT VALUE SYSTEM.—In conducting the review under this paragraph, the Administrator shall evaluate the preliminary pollutant limit value system used by the Department of Defense to assess the risks of hazardous substances and compare such system with the hazard ranking system. In particular, the Administrator shall study the effectiveness of each system in appropriately assessing the relative degree of risk to human health and the environment posed by facilities subject to each such system.

(D) CONTENTS OF REVIEW.— The review under this paragraph shall include—

(i) an explanation of the hazard ranking system, including the manner in which it was developed and the method of determining the relative hazard at different facilities under the system;

(ii) a determination of the relationship between the value determined for a facility under the hazard ranking system and the potential danger to human health and the environment;

(iii) an examination, based on the determination under clause (ii), of the effect of establishing a threshold value of 28.5 for facilities to be included on the National Priorities List;

(iv) a determination, based upon the determination under clause (ii) and the examination under clause (iii), of whether a new threshold value should be established for inclusion of facilities on such list; and

(v) a determination of the relationship between the value determined for a facility under the hazard ranking system and the types of remedial actions that are appropriate at such facility.

(E) REEVALUATION NOT REQUIRED.—The Administrator shall not be required to reevaluate, after the enactment of this Act, the hazard ranking of any facility which was evaluated in accordance with the criteria under section 105 of the CERCLA before such enactment and which was assigned a national priority under the National Contingency Plan.

(F) NEW INFORMATION.—Nothing in subparagraph (E) shall preclude the Administrator from taking new information into account in undertaking response actions under CERCLA.

(b) PRELIMINARY ASSESSMENT AND EVALUATION.—Section 105 of CERCLA is amended by inserting "(a) REVISION AND REPUBLICATION.—" after "105." and by adding the following new subsection at the end thereof:

"(b) PETITION FOR ASSESSMENT OF RELEASE.—Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant, may petition the Administrator to conduct a preliminary assessment of the hazards to public health and the environment which are associated with such release or threatened release. If the Administrator has not previously conducted a preliminary assessment of such release, the Administrator shall, within 12 months after the receipt of any such petition, complete such assessment or provide an explanation of why the assessment is not appropriate. If the preliminary assessment indicates that the release or threatened release concerned may pose a threat to human health or the environment, the Administrator shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in paragraph (8)(A) of subsection (a) to determine the national priority of such release or threatened release.".

(c) HAZARD RANKING SYSTEM.—Section 105(a)(8)(A) of CERCLA is amended by inserting the following after "ecosystems,": "the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release, the contamination or potential contamination of the ambient air which is associated with the release or threatened release,".

(d) NATIONAL PRIORITY LIST.—Subparagraph (B) of section 105(a)(8) of CERCLA is amended as follows:

(1) Strike out "at least four hundred of" when it appears.

(2) Strike out "at least" following the word "facilities" the second time it appears.

(3) Insert "A State shall be allowed to designate its highest priority facility only once." after the third full sentence thereof.

(e) STANDARDS AND PROCEDURES FOR INNOVATIVE TREATMENT TECHNOLOGIES.—Section 105(a) of CERCLA is amended by striking out "and" at the end of paragraph (8), by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; and", and by inserting after paragraph (9) the following new paragraph:

"(10) standards and testing procedures by which alternative or innovative treatment technologies can be determined to be appropriate for utilization in response actions authorized by this Act.".

(f) RELEASES FROM EARLIER SITES.—Section 105 of CERCLA is amended by adding the following new subsection at the end thereof:

"(c) RELEASES FROM EARLIER SITES.—Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the Administrator as a 'Site Cleaned Up To Date' on the National Priorities List (revised edition, December 1984) the site shall be restored to the National Priorities List, without application of the hazard ranking system.".

SEC. 106. ABATEMENT ACTIONS.

Section 106 of CERCLA is amended by adding the following new subsection after subsection (c):

"(d) PESTICIDES.—The Administrator shall not take action under this section with respect to any release or threatened release resulting from the normal application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this subsection shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action for such hazardous substance.".

SEC. 107. LIABILITY.

(a) FOREIGN VESSELS.—Section 107(a)(1) of CERCLA is amended by striking out "(otherwise subject to the jurisdiction of the United States)".

(b) COSTS AND DAMAGES.—Section 107(a)(4) of CERCLA is amended as follows:

(1) In subparagraph (A) insert after "not inconsistent with the national contingency plan" the following: "and all costs incurred by the United States Government or a State under section 104(b)".

(2) Strike out "and" at the end of subparagraph (B), strike out the period at the end of subparagraph

(C) and insert in lieu thereof "; and", and insert at the end of such section the following:

"(D) the costs of any health assessment or health effects study carried out under section 116.

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from 90 days after the date on which an action for recovery of such amounts is filed. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is applicable to investments of the Fund under section 9602 of the Internal Revenue Code of 1954. For purposes of applying section 9602 of the Internal Revenue Code of 1954, the term 'comparable maturity' shall be determined with reference to the date 90 days after the date of filing of the action for recovery under this section.".

(c) EMERGENCY RESPONSE ACTIONS.—

(1) LIABILITY FOR.—Section 107(d) of CERCLA is amended by striking out "damages" each place it appears and inserting in lieu thereof "costs and damages" and by inserting before the second sentence the following: "This subsection shall not alter the liability of any person who is liable or potentially liable under subsection (a) of this section who subsequently undertakes a response action.".

(2) GOVERNMENTAL RESPONSE TO EMERGENCY.—Such section 107(d) is further amended by inserting "(1) RENDERING CARE OR ADVICE.—" after "(d)" and adding the following new paragraph at the end thereof:

"(2) GOVERNMENTAL RESPONSE TO EMERGENCY.—

"(A) IN GENERAL.—No Federal, State, or local government agency shall be liable under this title for costs and damages resulting from actions taken by the agency in response to an emergency created by the release or threatened release of a hazardous substance, pollutant, or contaminant from a vessel, facility, or site owned by another person. This paragraph shall not affect the liability of any Federal, State or local government agency for negligence.

"(B) PERSONS RETAINED OR HIRED.—Any person retained or hired by a State to take any action described in subparagraph (A) shall have the same exemption from liability provided to the State under subparagraph (A).".

(d) NATURAL RESOURCES.—

(1) DESIGNATION OF FEDERAL AND STATE OFFICIALS.—Section 107(f) of CERCLA is amended by inserting "(1) NATURAL RESOURCES LIABILITY.—"

after "(f)" and by adding at the end thereof the following new paragraphs:

"(2) DESIGNATION OF FEDERAL AND STATE OFFICIALS.—

"(A) FEDERAL.—Each Federal agency designated as a natural resource trustee under the National Contingency Plan published under section 105 of this Act shall assess damages for injury to, destruction of, or loss of natural resources under its trusteeship resulting from a release of hazardous substances for the purposes of this Act and section 311(f)(4) and (5) of the Federal Water Pollution Control Act and may, upon request of and reimbursement from a State, assess damages for those natural resources under the State's trusteeship.

"(B) STATE.—The Governor of each State shall designate the State officials who may act on behalf of the public as trustees for natural resources under this Act and section 311 of the Federal Water Pollution Control Act and shall notify the Administrator of such designations. Such State officials shall assess damages to natural resources for the purposes of this Act and such section 311 for those resources under their trusteeship.

"(C) REBUTTABLE PRESUMPTION.—Any determination or assessment of damages to natural resources for the purposes of this Act and section 311 of the Federal Water Pollution Control Act made by a Federal or State trustee in accordance with the regulations promulgated under section 301(c) of this Act shall have the force and effect of a rebuttable presumption on behalf of the trustee in any judicial proceeding under this Act or section 311 of the Federal Water Pollution Control Act.".

(2) USE OF RECOVERED FUNDS.—Section 107(f)(1) of CERCLA (as designated by paragraph (1) of this subsection) is amended by striking out the third sentence and inserting in lieu thereof the following: "Sums recovered by the United States Government as trustee under this subsection shall be retained by the Administrator, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) shall not be limited by the sums which can be used to restore or replace such resources.".

(e) NORMAL APPLICATION OF PESTICIDES.—Section 107(i) of CERCLA is amended by inserting "normal" before "application of a pesticide".

(f) FEDERAL AGENCIES.—Section 107(g) of CERCLA is amended to read as follows:

"(g) Federal Agencies.—For provisions relating to Federal agencies, see section 119 of this Act."

(g) FEDERAL LIEN.—Section 107 of CERCLA is amended by adding at the end thereof the following new subsections:

"(k) FEDERAL LIEN.—

"(1) IN GENERAL.—All costs and damages for which a person is liable to the United States under subsection (a) of this section (other than the owner or operator of a vessel under paragraph (1) of subsection (a)) shall constitute a lien in favor of the United States upon all real property and rights to such property which—

"(A) belong to such person; and

"(B) are subject to or affected by a removal or remedial action.

"(2) DURATION.—The lien imposed by this subsection shall arise at the later of the following:

"(A) The time costs are first incurred by the United States with respect to a response action under this Act.

"(B) The time that the person referred to in paragraph (1) is provided (by certified or registered mail) written notice of his potential liability.

Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113.

"(3) NOTICE AND VALIDITY.—The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is located. Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this subsection. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is located. For purposes of this subsection, the terms 'purchaser' and 'security interest' shall have the definitions provided under section 6323(h) of the Internal Revenue Code of 1954.

"(4) ACTION IN REM.—The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.

"(l) MARITIME LIEN.—All costs and damages for which the owner or operator of a vessel is liable under subsection (a)(1) with respect to a release or threatened release from such vessel shall constitute a maritime lien in favor of the United States on such vessel. Such costs may be recovered in an action in rem in the district court of the United States for the district in which the vessel may be found. Nothing in this subsection shall affect the right of the United States to bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.".

SEC. 108. FINANCIAL RESPONSIBILITY.

(a) DEADLINE FOR ISSUANCE OF REGULATIONS.—Section 108(b)(1) of CERCLA is amended by inserting after "this Act" the first place it appears the following: "and not later than one year after the date of submission of the insurability study under section 301(g) to Congress".

(b) EVIDENCE OF FINANCIAL RESPONSIBILITY.—Section 108(b)(2) of CERCLA is amended by adding the following at the end thereof: "Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.".

(c) PHASE-IN PERIOD.—Section 108(b)(3) of CERCLA is amended by striking out "over a period of not less than three and no more than six years" and inserting in lieu thereof "as quickly as can reasonably be achieved but in no event more than four years".

(d) Direct Action; Liability.—Subsections (c) and (d) of section 108 of CERCLA are amended to read as follows:

"(c) Direct Action.—

"(1) Releases from vessels.—In the case of a release or threatened release from a vessel, any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility for such vessel under subsection (a). In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but the guarantor may not invoke any other defense that the guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

"(2) Releases from facilities.—In the case of a release or threatened release from a facility, any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility for such facility under subsection (b), if the person liable under section 107 is in bankruptcy, reorganization, or arrangement pursuant to the

Federal Bankruptcy Code, or if, with reasonable diligence, jurisdiction in the Federal courts cannot be obtained over a person liable under section 107 who is likely to be solvent at the time of judgment. In the case of any action pursuant to this paragraph, the guarantor shall be entitled to invoke all rights and defenses which would have been available to the person liable under section 107 if any action had been brought against such person by the claimant and all rights and defenses which would have been available to the guarantor if an action had been brought against the guarantor by such person.

"(d) LIMITATION OF GUARANTOR LIABILITY.—

"(1) TOTAL LIABILITY.—The total liability under this Act of any guarantor for a vessel or facility shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the person liable under section 107.

"(2) OTHER LIABILITY.—Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual, or common law liability of a guarantor, including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed, interpreted, or applied to diminish the liability of any person under section 107 of this Act or other applicable law.".

SEC. 109. PENALTIES.

(a) SECTION 103.—

(1) CRIMINAL PENALTY.—Section 103(b) of CERCLA is amended by—

(A) inserting after "knowledge of such release" the following: "or who submits in such a notification any information which he knows to be false or misleading"; and

(B) striking out "not more than $10,000 or imprisoned for not more than one year, or both" and inserting in lieu thereof "in accordance with section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisoned for not more than three years, or both".

(2) CIVIL PENALTY.—Section 103(b) of CERCLA is amended by inserting the following before the last sentence: "Any such person shall also be subject to a civil penalty of not more than $25,000 for each day during which such failure continues.".

(3) DESTRUCTION OF RECORDS.—Section 103(d)(2) of CERCLA is amended by striking out "not more than $20,000, or imprisoned for not more than one year or both." and inserting in lieu thereof "in ac-

cordance with section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisoned for not more than three years, or both. Any such person shall also be subject to a civil penalty of not more than $25,000 for each day during which such violation continues.".

(b) SECTION 104.—Section 104(e)(2) of CERCLA is amended by adding the following at the end thereof:

"(9) CIVIL PENALTY.—Any person who fails or refuses to comply with a request or order under this subsection shall be subject to a civil penalty of not more than $25,000 for each day during which such failure or refusal continues.".

(c) SECTION 106.—Section 106(b) of CERCLA is amended—

(1) by striking out "who willfully" and inserting in lieu thereof "who, without sufficient cause, willfully"; and

(2) by striking out "$5,000" and inserting in lieu thereof "$25,000".

(d) SECTION 108.—Section 108 of CERCLA is amended by adding at the end the following:

"(e) CIVIL PENALTY.—Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of this section, the regulations issued under this section, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $25,000 for each day of violation.".

(e) ASSESSMENT AND COLLECTION OF CIVIL PENALTIES.—Section 109 of CERCLA is amended to read as follows:

"SEC. 109. ASSESSMENT AND COLLECTION OF CIVIL PENALTIES.

"(a) UNDER SECTION 16 OF TOSCA.—Any civil penalty under this Act (other than section 106(b)) shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 16 of the Toxic Substances Control Act.

"(b) SUBPOENAS.—In any proceeding for the assessment of a civil penalty under this Act (other than section 106(b)), the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.".

(f) SECTION 112.—Section 112(b)(1) of CERCLA is amended by striking out "up to $5,000 or imprisoned for not more than one year, or both" and inserting in lieu thereof "in accordance with section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisoned for not more than three years, or both".

SEC. 110. SECTION 110.

Section 110 is not amended.

SEC. 111. USES OF FUND.

(a) AMOUNT OF FUND.—Section 111 of CERCLA is amended by inserting after "(a)" the following: "IN GENERAL.—For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Superfund established under section 221 not more than $1,830,000,000 for each of the first 5 fiscal years beginning after September 30, 1985 (plus for each such fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection as has not been appropriated before the beginning of the fiscal year involved).".

(b) USE OF FUND FOR GRANTS.—Section 111(a) of CERCLA is amended by striking out "and" at the end of paragraph (3), by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and", and by adding the following new paragraph at the end thereof:

"(5) the cost of grants under section 117(e) (relating to grants for technical assistance).".

(c) USES INCLUDED.—(1) Section 111(c) of CERCLA is amended by striking out "and" at the end of paragraph (5), by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and", and by adding the following new paragraphs at the end thereof:

"(7) costs incurred by the Administrator in evaluating facilities pursuant to petitions under section 105(b);

"(8) the costs of contracts entered into under section 104(a)(1) to oversee and review the conduct of remedial investigations and feasibility studies undertaken by persons other than the Administrator and the costs of appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements, where the responsible party or parties have been determined, but where inadequate oversight assistance has been provided by that responsible party or parties;

"(9) the costs incurred by the Administrator in acquiring real estate or interests in real estate under section 104(j);

"(10) the cost of carrying out section 311(b) (relating to research, development, and demonstration of alternative and innovative treatment technologies and training programs), section 311(c) (relating to hazardous waste research), and section 311(d) (relating to university hazardous substance research centers), except that the amounts available for such purposes shall not exceed the amounts specified in subsection (o);

"(11) reimbursements to local governments under section 123, except that during the 5-fiscal-year period beginning October 1, 1985, not more than 0.1 percent of the total amount appropriated from the Fund may be used for such reimbursements; and

"(12) the costs of worker training and education grants under section 126(e), to the extent that such costs do not exceed $10,000,000 for each of the fiscal years 1986, 1987, 1988, 1989, and 1990.".

(2) Section 111(c)(4) of CERCLA is amended by striking out "epidemiologic studies" and inserting in lieu thereof "epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles".

(d) DEFINITION OF HEALTH ASSESSMENT.—Section 111(c) of CERCLA is amended by adding the following at the end thereof: "As used in paragraph (4), the term 'health assessment' shall have the meaning provided by section 116(f)(7).".

(e) NATURAL RESOURCE DAMAGE CLAIMS.—Section 111(b) of CERCLA is amended as follows:

(1) Insert "(1)" after "(b)".

(2) Add the following new paragraph at the end thereof:

"(2) PAYMENT OF NATURAL RESOURCE CLAIMS.—

"(A) GENERAL REQUIREMENTS.—No natural resource claim may be paid from the Fund unless the Administrator determines that the claimant has exhausted all administrative and judicial remedies to recover the amount of such claim from persons who may be liable under section 107. All natural resource claims filed after December 1, 1985, may be paid only if a natural resource damage assessment has been carried out in accordance with regulations promulgated by the Secretary of the Interior.

"(B) CLAIMS PENDING AS OF DECEMBER 1, 1985.—(i) The Administrator shall determine the sum of natural resource claims against the fund which were pending but unpaid as of December 1, 1985.

"(ii) The Administrator may pay all or a portion of any claim referred to in clause (i) in accordance with the applicable requirements of this Act, except that the total amount paid from the Fund for the total of such claims shall not exceed 50 percent of the sum determined under clause (i). The Administrator may not pay any such claim unless the claim has been determined to be valid.

"(C) DEFINITION.—As used in this paragraph, the term 'natural resource claims' means claims for injury to, or destruction or loss of, natural resources.

The term includes claims for the cost of natural resource damage assessment.".

(f) AMENDMENT TO SECTION 111(e).—Section 111(e)(1) of CERCLA is amended by inserting "pursuant to subsection (a)(2)" after "Fund" the first place it appears.

(g) INSPECTOR GENERAL.—Section 111(k) of CERCLA is amended to read as follows:

"(k) INSPECTOR GENERAL.—In each fiscal year, the Inspector General of each department, agency, or instrumentality of the United States which is carrying out any authority of this Act shall undertake the following:

"(1) AUDIT.—The conduct of an annual audit of all payments, obligations, reimbursements, or other uses of the Fund in the prior fiscal year, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The audit shall include an examination of a random sample of agreements with States carrying out response actions under this title and an examination of remedial investigations and feasibility studies prepared for remedial actions.

"(2) STATUS REPORT.—The preparation of a report on the status of all remedial and enforcement actions undertaken during the prior fiscal year. The status report shall include a comparison to remedial and enforcement actions undertaken in prior fiscal years.

"(3) ESTIMATE.—The preparation of an estimate of the amount of resources, including the number of work years or personnel, which would be necessary for the department, agency, or instrumentality to complete the implementation of all duties vested in the department, agency, or instrumentality under this Act.

The Inspector General shall submit to the Congress an annual report regarding the audit and status report required under this subsection. The report shall contain such recommendations as the Inspector General deems appropriate. Each Federal agency shall cooperate with the Inspector General in carrying out this subsection.".

(h) AUTHORIZATION OF APPROPRIATIONS.—Section 111 of CERCLA is amended by adding the following subsection after subsection (l):

"(m) GENERAL REVENUE SHARE OF SUPERFUND.—

"(1) IN GENERAL.—The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund:

"(A) For fiscal year 1986, $250,000,000.

"(B) For fiscal year 1987, $250,000,000.

"(C) For fiscal year 1988, $250,000,000.

"(D) For fiscal year 1989, $250,000,000.

"(E) For fiscal year 1990, $250,000,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Revenue Act of 1980 as has not been appropriated before the beginning of the fiscal year involved.

"(2) COMPUTATION.—The amounts authorized to be appropriated under paragraph (1) of this subsection in a given fiscal year shall be available only to the extent that such amount exceeds the amount determined by the Secretary under section 221(b)(1)(B) for the prior fiscal year.".

(i) ATSDR.—Section 111 of CERCLA is amended by adding the following new subsection after subsection (m):

"(n) AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.—For fiscal year 1986 and each fiscal year thereafter, not less than $30,000,000 shall be directly available to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) and section 116. Any funds so made available which are not obligated by the end of the fiscal year in which made available shall be returned to the Fund.".

(j) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM.—Section 111 of CERCLA is amended by adding the following new subsection after subsection (n):

"(o) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM.—(1) For each of the fiscal years 1986, 1987, 1988, 1989, and 1990, not more than $20,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 311(b) (relating to research, development, and demonstration) other than basic research. Such amounts shall remain available until expended.

"(2) From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 311(a) (relating to hazardous substance research, demonstration, and training activities):

"(A) For the fiscal year 1986, $3,000,000.

"(B) For the fiscal year 1987, $10,000,000.

"(C) For the fiscal year 1988, $20,000,000.

"(D) For the fiscal year 1989, $30,000,000.

"(E) For the fiscal year 1990, $35,000,000.

No more than 10 percent of such amounts shall be used for training under section 311(a) in any fiscal year.

"(3) For each of the fiscal years 1986, 1987, 1988, 1989, and 1990, not more than $5,000,000 of the amounts available in the Fund may be used for the purposes of section 311(d) (relating to university hazardous substance research centers).".

SEC. 112. CLAIMS PROCEDURE.

Section 112(d) of CERCLA is amended to read as follows:

"(d) STATUTE OF LIMITATIONS.—

"(1) CLAIMS FOR RECOVERY OF COSTS.—No claim may be presented under this section for recovery of the costs referred to in section 107(a) after the date six years after the date of completion of all response action.

"(2) MINORS AND INCOMPETENTS.—The time limitations contained herein shall not begin to run—

"(A) against a minor until the earlier of the date when he reaches eighteen years of age or the date on which a legal representative is duly appointed for him, or

"(B) against an incompetent person until the earlier of the date on which his incompetency ends or the date on which a legal representative is duly appointed for him.".

SEC. 113. LITIGATION, JURISDICTION, AND VENUE.

(a) NATIONWIDE SERVICE OF PROCESS.—Section 113 of CERCLA is amended by adding the following new subsection at the end thereof:

"(e) NATIONWIDE SERVICE.—In any action by the United States under section 106 or 107, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.".

(b) CONTRIBUTION; STATUE OF LIMITATION.—Section 113 of CERCLA is amended by adding the following new subsections after subsection (e):

"(f) CONTRIBUTION.—

"(1) CONTRIBUTION.—Except as provided in paragraph (2), any person potentially liable or held to be liable in an action under section 106 or section 107 may bring an action for contribution or indemnity against any other person liable or potentially liable. In any such action in a court of the United States the Federal Rules of Civil Procedure shall apply. In any such contribution action in a court of the United States, the court may use its equitable powers to apportion costs among the liable parties, taking relevant equitable considerations into account. Except as provided in paragraph (2) of this subsection, this subsection shall not impair any right of contribution or indemnity under existing law.

"(2) SETTLEMENT.—A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement. This paragraph does not apply to a settlement which was achieved through fraud, misrepresentation, other misconduct by one of the parties to the settlement, or mutual mistake of fact.

"(3) PERSONS NOT PARTY TO SETTLEMENT.—(A) If the United States or a State has obtained less than complete relief from a person who has resolved its liability to the United States or the State in an administrative or judicially approved settlement, the United States or the Secretary may bring an action against any person who has not so resolved its liability.

"(B) A person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may bring an action for contribution or indemnification against any person who is not party to a settlement referred to in paragraph (2).

"(C) In any action under this paragraph, the rights of any person who has resolved its liability to the United States or a State shall be subordinate to the rights of the United States or the State. Any contribution action brought under this paragraph shall be governed by Federal law.

"(g) STATUTE OF LIMITATIONS.—

"(1) ACTIONS FOR NATURAL RESOURCE DAMAGES.—Except as provided in paragraph (3), no action may be commenced for damages (as defined in section 101(6)) under this Act, unless that action is commenced within 3 years after the later of the following:

"(A) The date of the discovery of the loss.

"(B) The date on which regulations are promulgated under section 301(c).

With respect to any facility listed on the national priorities list, any Federal facility identified under section 120, or any facility at which a remedial action is otherwise scheduled, an action for damages must be commenced within 3 years after the completion of the remedial action (excluding operation and maintenance activities), but in no event may an action for damages with respect to such a facility be commenced before selection of the remedial action if the Administrator is diligently proceeding with a remedial investigation and feasibility study under section 104(b). The limitation in the preceding sentence on commencing an action before selection of the remedial action does not apply to actions filed on or before December 11, 1983.

"(2) ACTIONS FOR RECOVERY OF COSTS.—An initial action for recovery of the costs referred to in section 107 must be commenced—

"(A) for a removal action, within 3 years after completion of the removal action, except that such cost recovery action must be brought within 6 years after a determination to grant a waiver under section 104(c)(1)(C) for continued response action; and

"(B) for a remedial action, within 6 years after initiation of physical on-site construction of the remedial action, provided that, if the remedial action is initiated within 3 years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this subparagraph.

In any such initial action, the court shall enter a declaratory judgment on liability for response costs that will be binding on any subsequent action or actions to recover further response costs. A subsequent action or actions under section 107 for further response costs at the facility may be maintained at any time during the response action, but must be commenced no later than 3 years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under section 107 for recovery of costs at any time after such costs have been incurred.

"(3) CONTRIBUTION.—No action for contribution for any response costs or damages may be commenced more than 3 years after—

"(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

"(B) the date of entry of a judicially approved settlement with respect to such costs or damages.

"(4) SUBROGATION.—No action based on rights subrogated pursuant to this section by reason of payment of a claim may be commenced under this title more than 3 years after the date of payment of such claim.

"(5) MINORS AND INCOMPETENTS.—The time limitations contained herein shall not begin to run—

"(A) against a minor until the earlier of the date when he reaches eighteen years of age or the date on which a legal representative is duly appointed for him, or

"(B) against an incompetent person until the earlier of the date on which his incompetency ends or the date on which a legal representative is duly appointed for him.".

(c) PRE-ENFORCEMENT REVIEW.—

(1) CONFORMING AMENDMENT.—Section 113(b) of CERCLA is amended by striking out "subsection" and inserting in lieu thereof "subsections" and inserting "and (h)" after "(a)".

(2) TIMING OF REVIEW; ADMINISTRATIVE RECORD.—Section 113 of CERCLA is amended by adding at the end thereof the following new subsections:

"(h) TIMING OF REVIEW.—No court shall have jurisdiction to review any challenges to removal or remedial action selected under section 104 or any order issued under section

104(b) or to review any order issued under section 106(a), in any action other than one of the following:

"(1) An action under section 107 to recover response costs or damages or for contribution or indemnification.

"(2) An action to enforce an order issued under section 104(b) or 106(a) or to recover a penalty for violation of such order.

"(3) An action for reimbursement under section 106(b)(2).

"(4) An action under section 310 alleging that the removal or remedial action taken under section 104 or secured under section 106 was in violation of any requirement of this Act. Such an action may not be brought with regard to an ongoing removal where a remedial action is to be undertaken at the site.

"(5) An action by the United States under section 106 for injunctive relief.

"(6) A motion by a potentially responsible party to review the Administrator's selection of the remedy under a consent decree which has been entered under section 106 and in which such potentially responsible party has made a commitment to undertake a remedial investigation and feasibility study and to perform or cause to be performed all of the judicially approved remedial action.

"(7) A motion by a potentially responsible party to review the Administrator's selection of the remedy under a consent decree which has been entered under section 106 and in which such potentially responsible party has agreed to perform or cause to be performed all of the judicially approved remedial action.

"(8) A motion by a potentially responsible party who is a recipient of an administrative order under section 106 to review the Administrator's selection of the remedy, where the recipient of the order has, without admitting that the release in question constituted an imminent and substantial endangerment under section 106 and without admitting liability, agreed to the terms of the order except for the Administrator's selection of the remedy. In such cases, the order shall be entered in the District Court as a consent decree.

In ruling on motions under paragraphs (6), (7), and (8), the District Court shall act without delay and shall rule expeditiously. There shall be no right of appeal by any party from such ruling.

"(i) INTERVENTION.—In any action commenced under subsection (h), any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest.

"(j) Judicial Review.—

"(1) In general.—For purposes of judicial review under this section, the administrative record shall consist of—

"(A) in the case of a removal action, the record developed under regulations issued pursuant to subsection (1)(2)(A); and

"(B) in the case of a remedial action, the record developed under subsection (1)(2)(B).

"(2) Limitation.—In any judicial action under section 106 or 107, judicial review of any issues concerning the adequacy of any response action taken or ordered by the Administrator shall be limited to the administrative record. Objections and evidence which were not made a part of the administrative record may be considered by the court only if such objections and evidence were not reasonably available when the record was being developed.

"(3) Standard.—In considering objections raised in any judicial action under section 106 or 107, the court shall uphold the Administrator's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law.

"(4) REMEDY.—If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award only the response costs or damages or other relief being sought to the extent that such relief is not inconsistent with the national contingency plan.

"(5) PROCEDURAL ERRORS.—In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

"(k) ADMINISTRATIVE RECORD AND PARTICIPATION PROCEDURES.—

"(1) ADMINISTRATIVE RECORD.—The Administrator shall establish an administrative record upon which the Administrator shall base the selection of a response action. The record shall consist of—

"(A) in the case of a removal action, the record developed under regulations issued pursuant to paragraph (2)(A); and

"(B) in the case of a remedial action, the record developed under paragraph (2)(B).

The administrative record shall be available to the public at or near the facility at issue. The Administrator also may place duplicates of the administrative record at any other location.

"(2) PARTICIPATION PROCEDURES.—

"(A) REMOVAL ACTION REGULATIONS.— The Administrator shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which the Administrator will base the selection of removal actions and on which judicial review of removal actions will be based.

"(B) REMEDIAL ACTION REQUIREMENTS.— The Administrator shall provide for the participation of interested persons, including potentially responsible parties, in the development of the administrative record on which the Administrator will base the selection of remedial actions and on which judicial review of remedial actions will be based. The administrative record under this subparagraph shall include, at a minimum, the following:

"(i) Notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.

"(ii) A reasonable opportunity to comment and provide information regarding the plan.

"(iii) An opportunity for a public meeting in the affected area, in accordance with section 117(a)(2).

"(iv) A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations.

"(v) A statement of the basis and purpose of the selected action.

For purposes of this subparagraph, the administrative record shall include all items developed and received under this subparagraph and all items described in the second sentence of section 117(d). The Administrator shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code to carry out the requirements of this subparagraph.

"(C) POTENTIALLY RESPONSIBLE PARTIES.—The Administrator shall make reasonable efforts to identify and notify potentially responsible parties as early as possible before selection of a response action. Nothing in this paragraph shall be construed to be a defense to liability under this Act.".

(d) REIMBURSEMENT.—Section 106(b) of CERCLA is amended as follows:

(1) Insert "(1)" after "(b)".

(2) Strike out "who willfully" and insert "who, without sufficient cause, willfully".

(3) Add at the end thereof the following new paragraph:

"(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) may, within 60 days after completion of the required action, petition the Administrator for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate that applies to investments of the Fund under section 223(b) of this Act.

"(B) If the Administrator refuses to grant all or part of a petition made under this paragraph, the petitioner may within 30 days of receipt of such refusal file an action against the Administrator in the appropriate United States district court seeking reimbursement from the Fund.

"(C) Except as provided in subparagraph (D), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 107(a) and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

"(D) A petitioner who is liable for response costs under section 107(a) may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the Administrator's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

"(E) Reimbursement awarded by a court under subparagraph (C) or (D) may include appropriate costs, fees, and other expenses in accordance with subsections (a) and (d) of section 2412 of title 28 of the United States Code. A petitioner who has established pursuant to subparagraph (C) that it is not liable for any response costs may also receive compensatory damages. Any reimbursement awarded under this subparagraph shall not be paid from the Fund.

"(F) In any action under section 113(h), if the remedial action conducted under an administrative order or consent decree is determined to be arbitrary and capricious or otherwise not in accordance with law, any person who has complied with the terms of any administrative order or consent decree issued under subsection (a) may petition the Administrator for reimbursement from the Fund for the reasonable costs of such action, including interest. The Administrator shall grant such petition for all reasonable response costs incurred by the petitioner pursuant to the portions of the administrative order for consent decree found to be arbitrary and capricious or otherwise not in accordance with law.".

SEC. 114. RELATIONSHIP TO OTHER LAW.

Section 114(c) of CERCLA is amended to read as follows:

"(c) STATE FUNDS.—Notwithstanding any provision of this or any other law, a State may require any person to contribute to any fund the purpose of which is to pay for any costs of response or damages.".

SEC. 115. DELEGATION OF FUNCTIONS.

Section 115 of CERCLA is amended to read as follows:

“SEC. 115. AUTHORITY TO DELEGATE FUNCTIONS AND ISSUE REGULATIONS.

“(a) DELEGATION OF FUNCTIONS.—

“(1) THE PRESIDENT.—The President is authorized to delegate and assign any duties or powers imposed upon or assigned to him necessary to carry out the provisions of this title.

“(2) THE ADMINISTRATOR.—The Administrator is authorized to delegate and assign to officers and employees of the Environmental Protection Agency any duties or powers imposed upon or assigned to him necessary to carry out the provisions of this title.

“(b) REGULATIONS.—The Administrator is authorized to issue any regulations necessary to carry out the provisions of this title.”.

SEC. 116. PUBLIC HEALTH ASSESSMENT AND PROTECTION AUTHORITIES.

Title I of CERCLA is amended by inserting the following new section after section 115:

“SEC. 116. AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.

“(a) ESTABLISHMENT.—There is hereby established within the Public Health Service an agency, headed by an administrator, to be known as the Agency for Toxic Substances and Disease Registry (hereinafter in this Act referred to as ‘ATSDR’). The Administrator of ATSDR shall report to the Secretary of the Department of Health and Human Services.

"(b) DUTIES.—The Administrator of ATSDR shall effectuate and implement the health-related authorities of this Act with the cooperation of—

"(1) the Administrator,

"(2) the Commissioner of the Food and Drug Administration,

"(3) the Directors of the National Institutes of Health, the National Institute of Environmental Health Sciences, the National Institute of Occupational Safety and Health, and the Center for Disease Control,

"(4) the Administrator of the Occupational Safety and Health Administration,

"(5) the Administrator of the Social Security Administration,

"(6) the Secretary of Transportation, and

"(7) appropriate State and local health officials.

"(c) LIST OF RESTRICTED AREAS.—In cooperation with the States and other agencies of the Federal Government, the Administrator of ATSDR shall establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of contamination by hazardous substances.

"(d) LIST OF SUBSTANCES.—

"(1) INITIAL 100.—Within six months after the date of the enactment of this section, the Administrator of ATSDR and the Administrator shall prepare a list, in order of priority, of at least 100 hazardous substances which are most commonly found at facilities on the National Priorities List and which are posing the most significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances at facilities on the National Priorities List or at facilities to which a response to a release or a threatened release under section 104 is under consideration.

"(2) REVISION.—Within 24 months after the date of the enactment of this section, the Administrator of ATSDR and the Administrator shall revise the list prepared under paragraph (1). Such revision shall include, in order of priority, the addition of 100 or more such hazardous substances. In each of the three consecutive 12-month periods that follow, the Administrator of ATSDR shall revise, in the same manner as provided in the two preceding sentences, such list to include not fewer than 25 additional hazardous substances. The Administrator of ATSDR and the Administrator shall not less often than once every year thereafter revise such list to include additional hazardous substances in accordance with the criteria in paragraph (1).

"(e) INFORMATION ON HEALTH EFFECTS.—

"(1) LITERATURE, STUDIES, ETC.—The Administrator of ATSDR shall establish and maintain an inventory of research literature, reports, and studies on the health effects of each hazardous substance listed pursuant to subsection (d).

"(2) TOXICOLOGICAL PROFILES.—Based on all available information, including information maintained under paragraph (1) and data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator of ATSDR shall prepare toxicological profiles of each of the substances listed pursuant to subsection (d). The toxicological profiles shall be prepared in accordance with guidelines developed by the Administrator of ATSDR and the Administrator. Such profiles shall include, but not be limited to—

"(A) an examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects;

"(B) a determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects; and

"(C) where, appropriate, toxicological testing directed toward determining the maximum exposure level of a hazardous substance that is safe for humans.

The profiles required to be prepared under this paragraph for those hazardous substances listed under paragraph (1) of subsection (d) shall be completed, at a rate of 25 per year, within four years after the date of the enactment of this section. A profile required on a substance listed pursuant to paragraph (2) of subsection (d) shall be completed within three years after addition to the list. The profiles prepared under this paragraph shall be of those substances highest on the list of priorities under subsection (d) for which profiles have not previously been prepared. Profiles required under this paragraph shall be revised and republished as necessary, but no less often than once every three years.

Such profiles shall be provided to the States and made available to other interested parties.

"(3) HEALTH EFFECTS RESEARCH.—For any hazardous substance for which adequate information is not available (or for which such information is under development as determined under paragraph (2)(B)), the Administrator of ATSDR shall assure the initiation of a program of research designed to determine the health effects of such hazardous substance. Where feasible, such program shall seek to develop methods to determine the health effects of such hazardous substance in combination with other hazardous substances with which it is commonly found. Before assuring the initiation of such program, the Administrator of ATSDR shall consider recommendations of the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act on the types of research that should be done and on who should do the research.

"(4) COORDINATION.—The Administrator of ATSDR and the Administrator shall coordinate the development and implementation of any research program under this subsection. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate in the discretion of the Administrator and the Administrator of ATSDR and consistent with such purpose, a research program under this subsection may be carried out using programs of toxicological testing established under the Toxic Substances Control Act and the Federal Insecticide, Fungicide, and Rodenticide Act.

"(f) HEALTH ASSESSMENTS.—

"(1) FACILITIES ON NPL.—The Administrator of ATSDR shall perform a health assessment for each facility on the National Priorities List established under section 105 which meets each of the following criteria:

"(A) The presence of a hazardous substance has been confirmed at the facility.

"(B) Pathways of human exposure to hazardous substances have been demonstrated to exist at the facility, especially if such pathways involve direct contact with hazardous substances.

"(C) A human population has been exposed, or there exists a significant possibility that a human population has been exposed, to hazardous substances through the identified pathways and there may exist a significant threat of current or future adverse health effects for the population so exposed.

The determination of whether any facility on such list meets such criteria shall be based on information provided by the Administrator regarding such criteria. Nothing in this paragraph shall preclude the Administrator of ATSDR from performing, where appropriate and consistent with the National Contingency Plan, health assessments of releases of hazardous substances from any other facilities, including facilities which are not on such list. The Administrator or any State may request the Administrator of ATSDR to perform a health assessment under this section. The Administrator of ATSDR and the Administrator shall coordinate the performance of health assessments under this section.

"(2) PETITION TO ADMINISTRATOR OF ATSDR.—Any individual or group of individuals may submit a petition to the Administrator of ATSDR to perform a health assessment under this subsection. The petition shall provide evidence demonstrating that such individual or group is being exposed to a hazardous substance, and an empirical analysis of the level of exposure. The Administrator of ATSDR shall take action under paragraph (3)(A) if the Administrator of ATSDR determines that there is a reasonable likelihood that the exposure may present a significant risk to human health and that there is a reasonable likelihood that the hazardous substance is from one of the following facilities:

"(A) A facility where such substance is (or was in the past) treated, stored, recycled, or disposed of, on a regular basis.

"(B) A facility at which removal action is being taken (or was taken in the past) under any provision of this Act.

"(3) INITIATION OR EXPLANATION REQUIRED.—Within 45 days after receipt of a petition under paragraph (2), the Administrator of ATSDR shall do one of the following:

"(A) Initiate a health assessment.

"(B) Publish a written explanation of one of the following:

"(i) A determination that there is not a reasonable likelihood that the substance is from a facility referred to in paragraph (2).

"(ii) A determination that there is not a reasonable likelihood that the exposure presents a significant risk to human health.

"(iii) A determination that the evidence submitted or information available to the Administrator of ATSDR is not adequate to determine whether there is a reasonable likelihood that the substance is from a facility referred to in paragraph (2) or there is a reasonable likelihood that the exposure presents a significant risk to human health. If the Administrator of ATSDR determines under this clause that the evidence submitted is not adequate, the Administrator of ATSDR shall, in the written explanation, identify the additional information necessary for the Administrator of ATSDR to determine whether there is a reasonable likelihood that the substance is from a facility referred to in paragraph (2) or there is a reasonable likelihood that the exposure may present a significant risk to human health.

"(C) Respond in writing to the petition submitted under paragraph (2) by setting forth a schedule for review of the petition or a schedule to initiate a health assessment.

Each assessment under this paragraph shall be completed within six months after the date on which the health assessment is initiated.

"(4) PRIORITIES OF ASSESSMENTS.—In determining the priority in which to conduct health assessments under this subsection, the Administrator of ATSDR, in consultation with the Administrator, shall give priority to those facilities at which there is documented evidence of the release of hazardous substances, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of ATSDR existing health assessment data are inadequate to assess the potential risk to human health as provided in paragraph (7). In determining the priorities for conducting health assessments under this subsection, the Administrator of ATSDR shall consider the National Priorities List schedules and the needs of the Environmental Protection Agency pursuant to schedules for remedial investigation and feasibility studies.

"(5) RIFS.—Where a health assessment is done at a site on the National Priorities List, the Administrator of ATSDR shall complete such assessment promptly and, to the maximum extent practicable, before the completion of the remedial investigation and feasibility study at the facility concerned.

"(6) NOTICE AND REPORTING.—Any State or political subdivision carrying out a health assessment for a facility shall report the results of the assessment to the Administrator of ATSDR and the Administrator and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of ATSDR shall state such recommendation in any report on the results of any assessment carried out directly by the Administrator of ATSDR for such facility and shall issue periodic reports which include the results of all the assessments carried out under this subsection.

"(7) DEFINITION.—For the purposes of this section and section 111(c)(4), the term 'health assessment' means a determination of the potential individual and population human health risks posed by a facility. A health assessment shall be based on but not limited to the following information:

"(A) The nature and extent of contamination.

"(B) The existence, scope, and magnitude of potential pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination).

"(C) The size, population characteristics, and potential susceptibility of the community within the likely pathways of exposure.

"(D) The comparison of measured or estimated human exposure levels which are identified for hazardous substances and any exposure levels for such hazardous substances which are determined to be of significance to human health, including but not limited to those determined in the toxicological profiles under subsection (e)(2).

"(E) The comparison of appropriate existing morbidity and mortality data, relevant to the suspected population at risk of exposure, on diseases that may be associated with the observed levels of exposure.

If a significant excess of disease in a population is identified under subparagraph (E), the health assessment shall include, to the maximum extent practicable, an assessment of attributable risk for the purpose of determining the most likely explanations for that excess. A health assessment may include literature searches, information summarization and evaluation of existing environmental data, pilot samples, testing for food chain contamination, and similar activities. The Administrator of ATSDR shall utilize appropriate data available from the Administrator to avoid duplication of effort.

"(8) PURPOSE.—The purpose of health assessments under this section shall be to assist in determining whether actions under subsection (k) of this section should be taken to reduce human exposure to hazardous substances from a facility and whether additional information on human exposure and associated health risks is needed and should be acquired by conducting epidemiological studies under subsection (g), establishing a registry under subsection (h), establishing a health surveillance program under subsection (i), or through other means. In using the results of health assessments for determining additional actions to be taken under this section, the Administrator of ATSDR may consider additional information on the risks to the potentially affected population from all sources of such hazardous substances including known point or nonpoint sources other than those from the facility in question.

"(9) RESULTS, RECOMMENDATIONS, AND EVALUATIONS.—At the completion of each health assessment, the Administrator of ATSDR shall provide the

Administrator and each affected State with the results of such assessment, including recommendations concerning the need to further reduce exposure. In addition, if the health assessment indicates that the release or threatened release concerned may pose a serious threat to human health or the environment, the Administrator of ATSDR shall so notify the Administrator who shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in section 105(a)(8)(A) to determine whether the site shall be placed on the National Priorities List or, if the site is already on the list, the Administrator of the ATSDR may recommend to the Administrator that the site be accorded a higher priority.

"(10) RECOVERY OF COSTS.—In any case in which a health assessment performed under this subsection (including one required by section 3019(b) of the Solid Waste Disposal Act) discloses the exposure of a population to the release of a hazardous substance from a facility, the costs of such health assessment may be recovered as a cost of response under section 107 of this Act.

"(g) STUDIES.—

"(1) PILOT HEALTH EFFECTS STUDIES.—Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.

"(2) FULL SCALE.—Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of such pilot study or other study or health assessment, the Administrator of ATSDR shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances from a release or threatened release.

"(h) REGISTRY.—

"(1) AUTHORITY TO ESTABLISH.—In any case in which the results of a health assessment or epidemiologic study indicate a potential or observed significant risk to human health, the Administrator of ATSDR shall evaluate whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection. The Administrator of ATSDR shall establish such registry when such evaluation determines that an effective mechanism can be established to satisfactorily maintain such registry over a sufficient period of time to accomplish the desired purposes of this paragraph and either—

"(A) the registry could benefit its participants by prevention or early detection of serious adverse health effects from exposure to hazardous substances; or

"(B) the registry could provide significant information not currently available on human health effects of exposure to one or more hazardous substances.

"(2) UNLAWFUL DISCLOSURE.—The identity of any individual listed on a registry shall not be disclosed to any person except as may be necessary to carry out this section. Any person violating this paragraph shall be fined not more than $1,000 or imprisoned for not more than six months, or both, and shall be required to pay the costs of prosecution.

"(i) HEALTH SURVEILLANCE PROGRAM.—Where the Administrator of ATSDR has determined that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances based on the results of a health assessment conducted under subsection (f), an epidemiologic study conducted under subsection (g), or an exposure registry that has been established under subsection (h), and the Administrator of ATSDR has determined that such exposure is the result of a release from a facility, the Administrator of ATSDR shall initiate a health surveillance program for such population. This program shall include but not be limited to—

"(1) periodic medical testing where appropriate of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk; and

"(2) a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

"(j) REPORT EVERY TWO YEARS.—Two years after the date of the enactment of this subsection and every two years thereafter, the Administrator of ATSDR shall prepare and submit to the Administrator and Congress a report on the results of the activities of ATSDR regarding—

"(1) health assessments and pilot health effects studies conducted;

"(2) epidemiologic studies conducted;

"(3) hazardous substances which have been listed under subsection (d), toxicological profiles which have been developed, and toxicologic testing which has been conducted or which is being conducted under subsection (e);

"(4) registries established under subsection (h); and

"(5) an overall assessment, based on the results of activities conducted by the Administrator of ATSDR, of the linkage between human exposure to individual or combinations of hazardous substances due to releases from facilities covered by this Act or the Solid Waste Disposal Act and any increased incidence or prevalence of adverse health effects in humans.

"(k) REDUCTION OF EXPOSURE.—

"(1) SIGNIFICANT HUMAN EXPOSURE LEVEL.—If a health assessment or other study carried out under this Act identifies an individual or individuals exposed to a hazardous substance in a manner which presents a significant risk to human health, the Administrator shall take such steps as may be necessary to abate the risk. Such steps may include the following:

"(A) Provision of alternate household water supplies.

"(B) Temporary or permanent relocation of individuals.

"(2) INSUFFICIENT INFORMATION.—In any case in which information is insufficient, in the judgment of the Administrator of ATSDR or the Administrator to determine a significant human exposure level with respect to a hazardous substance, the Administrator may take such steps as may be necessary to reduce the exposure of any person to such hazardous substance to such level as the Administrator deems necessary to protect human health.

"(l) No Delay of Other Action.—In the case of any hazardous substance which is subject to a petition or study under this section, nothing in this section shall be construed to delay or otherwise impair the authority of the Administrator to exercise any authority vested in the Administrator under any other provision of law, including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act or the response and abatement authorities of this Act.

"(m) Peer Review.—All studies and results of research (other than health assessments) conducted under this section shall be reported or adopted only after appropriate peer review. Such peer review shall be completed, to the maximum extent practicable, within a period of 60 days and shall be conducted by panels consisting of no less than three nor more than seven members, who shall be scientific experts selected for such purpose by the Administrator of ATSDR on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Administrator of ATSDR.

"(n) Educational Materials.—In the implementation of this section and other health-related authorities of this Act, the Administrator of ATSDR shall assemble, develop, as necessary, and distribute to the States, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed in subsection (d)), through such means as the Administrator of ATSDR deems appropriate.

"(o) Direct Action and Cooperative Agreements.—The activities described in this section and section 111(c)(4) shall be carried out by the Administrator of ATSDR, either directly or through cooperative agreements with States (or political subdivisions thereof) which the Administrator of ATSDR determines are capable of carrying out such activities. Such activities shall include provision of consultations on health information, the conduct of health assessments, including those required under section 3019(b) of the Solid Waste Disposal Act, health studies, registries, and health surveillance.

"(p) Minimum Number of Employees.—The President shall provide adequate personnel for ATSDR, which shall not be fewer than 100 employees. For purposes of determining the number of employees under this subsection, an employee employed by ATSDR on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek.

"(q) FEDERAL FACILITIES.—In accordance with section 120, the Administrator of ATSDR shall have the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as such Administrator has with respect to any nongovernmental entity.

"(r) EMERGENCIES.—In cases of public health emergencies caused or believed to be caused by exposure to toxic substances, the Administrator of ATSDR—

"(1) shall provide medical testing and care to exposed individuals, including, but not limited to, tissue sampling, chromosomal testing, epidemiological studies, or any other assistance appropriate under the circumstances;

"(2) shall offer technical assistance and consultation to local and State health authorities that are providing medical testing and care to exposed individuals; and

"(3) shall use any authority provided under this section;

whether or not the determinations or other preliminary steps otherwise required under this section have been made or taken. Nothing in this subsection shall be construed to create an entitlement program.

"(s) POLLUTANTS AND CONTAMINANTS.—If the Administrator of ATSDR determines that it is appropriate for purposes of this section to treat a pollutant or contaminant as a hazardous substance, such pollutant or contaminant shall be treated as a hazardous substance for such purpose.".

SEC. 117. PUBLIC PARTICIPATION.

Title I of CERCLA is amended by adding the following new section after section 116:

"SEC. 117. PUBLIC PARTICIPATION.

"(a) PROPOSED PLAN.—Before adoption of any plan for remedial action to be undertaken by the Administrator or by a State or by any other person at any site, the Administrator or State, as appropriate, shall take both of the following actions:

"(1) Publish a notice and brief analysis of the proposed plan and make such plan available to the public.

"(2) Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility at issue regarding the proposed plan and regarding any waivers under section 121 (relating to cleanup standards). The Administrator shall keep a transcript of the meeting and make such transcript available to the public.

The notice and analysis published under paragraph (1) shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan.

"(b) FINAL PLAN.—Notice of the final remedial action plan adopted shall be published and the plan shall be made available to the public before commencement of any remedial action. Such final plan shall be accompanied by a discussion of any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under subsection (a).

"(c) EXPLANATION OF DIFFERENCES.—After adoption of a final remedial action plan—

"(1) if any remedial action is taken,

"(2) if any enforcement action under section 106 is taken, or

"(3) if any settlement or consent decree under section 106 is entered into,

and if such action, settlement, or decree differs in any significant respects from the final plan, the Administrator shall publish an explanation of the significant differences and the reasons such changes were made.

"(d) PUBLICATION.—For the purposes of this section, publication shall include, at a minimum, publication in a major local newspaper of general circulation. In addition, each item developed, received, published, or made available to the public under this section shall be available for public inspection and copying at or near the facility at issue.

"(e) GRANTS FOR TECHNICAL ASSISTANCE.—

"(1) AUTHORITY.—In accordance with rules promulgated by the Administrator, the Administrator may make grants available to any group of individuals which may be affected by a release or threatened release at any facility which is listed on the National Priorities List under the National Contingency Plan. Such grants shall be for the purpose of enabling the group to obtain technical assistance to review and assess data and information which has been prepared by the Administrator with respect to such facility and which is required to be published under this subsection.

"(2) AMOUNT.—The amount of any grant under this subsection may not exceed $25,000 for a single grant recipient. The Administrator may waive the $25,000 limitation in any case where such waiver is necessary to carry out the purposes of this subsection.

Each grant recipient shall be required, as a condition of the grant, to contribute at least 20 percent of the total of costs of the expert advice and technical assistance for which such grant is made. The Administrator may waive the 20 percent contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one grant may be made under this subsection with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.".

SEC. 118. MISCELLANEOUS PROVISIONS

(a) GENERAL PROVISIONS RELATING TO RESPONSE UNDER TITLE I.—Title I of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 118. GENERAL PROVISIONS RELATING TO RESPONSE UNDER TITLE I.

"(a) SCOPE OF PROGRAM.—The Administrator shall not respond under this Act to any of the following:

"(1) A release or threat of a release of a hazardous substance or pollutant or contaminant from residential dwellings or businesses or community structures where such dwellings or structures are not used for the deposition, storage, processing, treatment, transportation, or disposal of hazardous substances.

"(2) A release or threat of a release of a hazardous substance or pollutant or contaminant into public or private drinking water supplies due to deterioration of the system through ordinary use.

"(3) A release or threat of a release resulting exclusively from the mining of coal for which a timely response action is available and authorized under the Surface Mine Control and Reclamation Act of 1977.

"(4) A release or threat of a release of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found.

Notwithstanding the preceding provisions of this subsection, the Administrator may respond under this Act to any release or threat of release of a hazardous substance or pollutant or contaminant (including radon) in any form if the Administrator determines, in his discretion, that the release or threat of release constitutes a major public health or environmental emergency. As used in this subsection the term 'respond under this Act' includes response action under section 104 and abatement action under section 106.

"(b) HIGH PRIORITY FOR WELLS AND CERTAIN AQUIFERS.—For purposes of taking action under section 104 or section 106 and listing facilities on the National Priorities List, the Administrator shall give high priority to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a sole or principal drinking water source designated under section 1424(e) of title XIV of the Public Health Service Act (the Safe Drinking Water Act).

"(c) RADON CONTAMINATED SOIL.—Any radon contaminated soil that is in a residential area and is the subject of a remedial action for which a remedial investigation and feasibility study has been initiated before the enactment of this subsection shall be disposed of at a facility licensed by the Nuclear Regulatory Commission, or by a State pursuant to an agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021), for the land disposal of low-level radioactive waste. Any such remedial action which has been started, or for which a draft remedial investigation and feasibility study has been issued for public comment, before the date of the enactment of this subsection shall be completed as soon as is practicable after such date.".

(b) UNCONSOLIDATED QUARTERNARY AQUIFER.—Notwithstanding any other provision of law, no person may—

(1) locate or authorize the location of a landfill, surface impoundment, waste pile, injection well, or

land treatment facility over the Unconsolidated Quarternary Aquifer, or the recharge zone or streamflow source zone of such aquifer, in the Rockaway River Basin, New Jersey (as such aquifer and zones are described in the Federal Register, January 24, 1984, pages 2946–2948); or

(2) place or authorize the placement of solid waste in a landfill, surface impoundment, waste pile, injection well, or land treatment facility over such aquifer or zone.

This subsection may be enforced under sections 309(a) and (b) of the Federal Water Pollution Control Act. For purposes of section 309(c) of such Act, a violation of this subsection shall be considered a violation of section 301 of such Act.

(c) STUDY OF SHORTAGES OF SKILLED PERSONNEL.—The Comptroller General shall study the problem of shortages of skilled personnel in the Environmental Protection Agency to carry out response actions under CERCLA. In particular the Comptroller General shall study—

(1) the types of skilled personnel needed for response actions for which there are shortages in the Environmental Protection Agency,

(2) the extent of such shortages,

(3) pay differential between the public and private sectors for the skilled positions involved in response actions,

(4) the extent to which skilled personnel of Federal and State governments involved in response actions are leaving their positions for employment in the private sector,

(5) the success of programs of the Department of Defense and the Office of Personnel Management in retaining skilled personnel, and

(6) the types of training required to improve the skills of employees carrying out response actions.

The Comptroller General shall complete the study required by this subsection and submit a report on the results thereof to Congress not later than 12 months after the date of the enactment of this Act.

(d) STATE REQUIREMENTS NOT APPLICABLE TO CERTAIN TRANSFERS.—No State or local requirement shall apply to the transfer and disposal of any hazardous substance or pollutant or contaminant from a facility at which a release or threatened release has occurred to a facility for which a final permit under section 3005(a) of the Solid Waste Disposal Act is in effect if the following conditions apply—

(1) Such permit was issued after January 1, 1983 and before November 1, 1984.

(2) The transfer and disposal is carried out pursuant to a cooperative agreement between the Administrator and the State.

The terms used in this section shall have the same meaning as when used in CERCLA.

SEC. 119. RESPONSE ACTION CONTRACTORS.

Title I of CERCLA is amended by adding the following new section after section 118:

"SEC. 119. RESPONSE ACTION CONTRACTORS.

"(a) LIABILITY OF RESPONSE ACTION CONTRACTORS.—

"(1) RESPONSE ACTION CONTRACTORS.—Notwithstanding section 114, a person who is a response action contractor with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a vessel or facility shall not be liable under this title, under any other Federal law, under the law of any State or political subdivision, or under common law to any person for injuries, costs, damages, expenses, or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release.

"(2) NEGLIGENCE, ETC.—Paragraph (1) shall not apply in the case of a release that is caused by conduct of the response action contractor which is negligent, grossly negligent, or which constitutes intentional misconduct.

"(3) EFFECT ON WARRANTIES.—Nothing in this subsection shall affect the liability of any person under any warranty under Federal, State, or common law.

"(b) SAVINGS PROVISIONS.—

"(1) LIABILITY OF OTHER PERSONS.—Nothing in this section shall affect the liability under this Act or under any other Federal or State law of any person, other than a response action contractor.

"(2) BURDEN OF PLAINTIFF.—Nothing in this section shall affect the plaintiff's burden of establishing liability under this title.

"(c) INDEMNIFICATION.—

"(1) IN GENERAL.—The Administrator may agree to hold harmless and indemnify any response action contractor meeting the requirements of this subsection against any liability (including the expenses of litigation or settlement) for negligence arising out of the contractor's performance in carrying out response action activities under this title, unless such liability was caused by conduct of the contractor which was grossly negligent or which constituted intentional misconduct.

"(2) APPLICABILITY.—This subsection shall apply only with respect to a response action carried out under written agreement with—

"(A) the Administrator;

"(B) another Federal agency;

"(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 104(d)(1) of this title; or

"(D) any potentially responsible party, as defined by section 122.

"(3) NONAPPLICABILITY.—This subsection shall not be subject to section 1301 or 1341 of title 31 of the United States Code or section 3732 of the Revised Statutes (41 U.S.C. 11).

"(4) REQUIREMENTS.—An indemnification agreement may be provided under this subsection only if the Administrator determines that each of the following requirements are met:

"(A) The liability covered by the indemnification agreement exceeds or is not covered by insurance available, at a fair and reasonable price, to the contractor at the time the contractor enters into the contract to provide response action, and adequate insurance to cover such liability is not generally available at the time the response action contract is entered into.

"(B) The response action contractor has made diligent efforts to obtain insurance coverage from non-Federal sources to cover such liability.

"(C) In the case of a response action contract covering more than one facility, the response action contractor agrees to continue to make such diligent efforts each time the contractor begins work under the contract at a new facility.

"(5) LIMITATIONS.—

"(A) LIABILITY COVERED.—Indemnification under this subsection shall apply only to response action contractor liability which results from a release of any hazardous substance or pollutant or contaminant if such release arises out of response action activities.

"(B) DEDUCTIBLES AND LIMITS.—An indemnification agreement under this subsection shall include deductibles and shall place limits on the amount of indemnification to be made available.

"(C) CONTRACTS WITH POTENTIALLY RESPONSIBLE PARTIES.—

"(i) DECISION TO INDEMNIFY.—In deciding whether to enter into an indemnification agreement with a response action contractor carrying out a written contract or agreement with any potentially responsible party, the Administrator shall determine an amount which the potentially responsible party is able to indemnify the contractor. The Administrator may enter into such an indemnification agreement only if the Administrator determines that such amount of indemnification is inadequate to cover any reasonable potential liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. The Administrator shall make the determinations in the preceding sentences (with respect to the amount and the adequacy of the amount) taking into account the total net assets and resources of potentially responsible parties with respect to the facility at the time of such determinations.

"(ii) CONDITIONS.—The Administrator may provide indemnification for the amount determined under clause (i) under an indemnification agreement referred to in clause (i) only if the contractor has exhausted all administrative, judicial, and common law claims for indemnification against all potentially responsible parties participating in the clean-up of the facility with respect to the liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. Such indemnification agreement shall require such contractor to pay any deductible established under subparagraph (B) before the contractor may recover any amount from the potentially responsible party or under the indemnification agreement.

"(D) RCRA FACILITIES.—No owner or operator of a facility regulated under the Solid Waste Disposal Act may be indemnified under this subsection with respect to such facility.

"(E) PERSONS RETAINED OR HIRED.—A person retained or hired by a person described in subsection (f)(2)(A) shall be eligible for indemnification under this subsection only if the Administrator specifically approves of the retaining or hiring of such person.

"(6) REGULATIONS.—Within one year after the date of the enactment of this section, the Administrator shall promulgate regulations for carrying out the provisions of this subsection.

"(7) STUDY.—The Comptroller General shall conduct a study in the fiscal year ending September 30, 1989, on the application of this subsection, including whether indemnification agreements under this subsection are being used, the number of claims that have been filed under such agreements, and the need for this subsection. The Comptroller General shall report the findings of the study to Congress no later than September 30, 1989.

"(d) EXCEPTION TO EXEMPTION.—The exemption provided under subsection (a) and the authority of the Administrator to offer indemnification under subsection (c) shall not apply to any person covered by the provisions of paragraph (1), (2), (3), or (4) of section 107(a) with respect to the release or threatened release concerned if such person would be covered by such provisions even if such person had not carried out any actions referred to in subsection (e) of this section.

"(e) DEFINITIONS.—For purposes of this section—

"(1) RESPONSE ACTION CONTRACT.—The term 'response action contract' means any written contract or agreement entered into by a response action contractor (as defined in paragraph (2)(A) of this subsection) with—

"(A) the Administrator;

"(B) any other Federal agency;

"(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 104(d)(1) of this Act; or

"(D) any potentially responsible party;

to provide any response action under this Act with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment, or any ancillary services thereto for such facility.

"(2) RESPONSE ACTION CONTRACTOR.—The term 'response action contractor' means—

"(A) any—

"(i) person who enters into a response action contract with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility and is carrying out such contract; and

"(ii) person, public or nonprofit private entity, conducting a field demonstration pursuant to section 311(b); and

"(B) any person who is retained or hired by a person described in subparagraph (A) to provide any services relating to a response action.

"(3) INSURANCE.—The term 'insurance' means liability insurance which is fair and reasonably priced, as determined by the Administrator, and which is made available at the time the contractor enters into the response action contract to provide response action.

"(f) COMPETITION.—To protect the health and safety of the public and to assure the selection of technically superior response action contractors, no potential offeror of a bid or proposal for a contract, subcontract, or cooperative agreement to be performed and funded under the authority of this Act shall be denied the opportunity to compete for such contracts. Response action contractors and subcontractors for program management, construction management, architectural and engineering, surveying and mapping, and related services shall be selected in accordance with title IX of the Federal Property and Administrative Services Act of 1949. The Federal selection procedures or equivalent State requirements shall apply to appropriate contracts negotiated by all governmental agencies involved in carrying out this Act under memoranda of understanding, State cooperative agreements, or other means. Such procedures (or equivalent requirements) shall be followed by response action contractors and subcontractors.".

SEC. 120. FEDERAL FACILITIES.

(a) IN GENERAL.—Title I of CERCLA is amended by adding the following new section after section 119:

"SEC. 120. FEDERAL FACILITIES.

"(a) APPLICATION OF ACT TO FEDERAL GOVERNMENT.—

"(1) IN GENERAL.—Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107 of this Act. Nothing in this section shall be construed to affect the liability of any person or entity under sections 106 and 107.

"(2) APPLICATION OF GUIDELINES, ETC., TO FEDERAL FACILITIES.—All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable with respect to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the same extent as such guidelines, rules, regulations, and criteria are applicable with respect to other facilities. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act.

"(3) EXCEPTIONS.—This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to financial responsibility. Nothing in this Act shall be construed to require a State to comply with section 104(c)(3) in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

"(4) STATE LAWS.—State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States when such facilities are not included on the National Priorities List. The preceding sentence shall not apply to the extent a State law would apply any standard or requirement to such facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by any such department, agency, or instrumentality.

"(b) NOTICE.—Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act (in addition to the information required under section 3016(a)(3) of such Act) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

"(c) FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET.—

"(1) ESTABLISHMENT.—The Administrator shall establish a special Federal agency hazardous waste compliance docket for each department, agency, or instrumentality of the United States which shall contain each of the following:

"(A) The inventory required to be submitted by the department, agency, or instrumentality in accordance with section 3016 of the Solid Waste Disposal Act and subsection (b) of this section.

"(B) Information submitted by the department, agency, or instrumentality under section 3005 or 3010 of such Act.

"(C) Information submitted by the department, agency, or instrumentality under section 103 of this Act.

"(2) INSPECTION.—The docket established under this subsection shall be available for public inspection at reasonable times. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the docket under this subsection.

"(3) PERIODIC NOTICES.—Six months after establishment of the docket under this subsection and every six months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the preceding six-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket.

"(d) EVALUATION.—

"(1) DEADLINE.—Not later than January 31, 1987, where the Administrator determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment, the Administrator shall evaluate each facility included in the docket established under subsection (c) in accordance with the criteria established under the National Contingency Plan for determining priorities among releases for inclusion on the National Priorities List. Upon the receipt of a petition from the Governor of any State, the Administrator shall make such an evaluation of any facility included in the docket.

"(2) DEADLINE FOR INCLUSION.—Within 12 months after completion of the evaluation of a facility, the Administrator shall include the facility on the National Priorities List if the facility meets the criteria for inclusion on such list. Such criteria shall be applied in the same manner as the criteria are applied to facilities which are owned or operated by other persons.

"(e) REQUIRED ACTION BY DEPARTMENT.—

"(1) RIFS.—Not later than six months after the inclusion of any facility on the National Priorities List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator, commence a remedial investigation and feasibility study for such facility. In the case of any facility which is listed on such list before the date of the enactment of this section, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator, commence such an investigation and study for such facility within one year after such date of enactment.

"(2) COMMENCEMENT OF REMEDIAL ACTION; INTERAGENCY AGREEMENT.—The Administrator shall review the results of each investigation and study conducted as provided in paragraph (1). Within 180 days thereafter, the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the investigation and study. For purposes of completing the remedial action as promptly as practicable, each department, agency, or instrumentality shall request adequate funding in the President's annual budget submittal to the Congress. For purposes of public participation in accordance with section 117, the proposal of a plan for remedial action in an interagency agreement shall be treated as the proposal of a plan for remedial action and the adoption of such an agreement shall be treated as the adoption of a final plan.

"(3) CONTENTS OF AGREEMENT.—Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

"(A) A review of alternative remedial actions and selection of a remedial action plan by the Administrator.

"(B) A schedule for the completion of each such remedial action.

"(C) Arrangements for long-term operation and maintenance of the facility.

"(4) ANNUAL REPORT.—Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the

Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to, each of the following items:

"(A) A report on the progress in reaching interagency agreements under this section.

"(B) The specific cost estimates and budgetary proposals involved in each interagency agreement.

"(C) A report on progress in conducting investigations and studies under paragraph (1).

"(D) A report on progress in conducting remedial actions.

"(E) A report on progress in conducting remedial action at facilities which are not listed on the National Priorities List.

"(5) SETTLEMENTS WITH OTHER PARTIES.—If the Administrator, in consultation with the head of the relevant department, agency, or instrumentality of the United States, determines that remedial investigations and feasibility studies or remedial action will be done properly at the Federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of this subsection, the Administrator may enter into an agreement with such party under section 122.

"(f) TRANSFER OF AUTHORITIES.—Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person.

"(g) PROPERTY TRANSFERRED BY FEDERAL AGENCIES.—

"(1) NOTICE.—After the last day of the six-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any federally regulated hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

"(2) FORM OF NOTICE; REGULATIONS.—Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after the date of the enactment of this subsection but not later than 18 months after such date of enactment, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

"(3) CONTENTS OF CERTAIN DEEDS.—After the last day of the six-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain—

"(A) to the extent such information is available on the basis of a complete search of agency files—

"(i) a notice of the type and quantity of such hazardous substances, "(ii) notice of the time at which such storage, release, or disposal took place, and

"(iii) a description of the remedial action taken, if any, and

"(B) a covenant warranting that—

"(i) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and

"(ii) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States.

The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party (as defined in section 122(j) with respect to such real property.

"(h) OBLIGATIONS UNDER SOLID WASTE ACT.—Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act (including corrective action requirements).

"(i) STATE COORDINATOR.—A State may request and be granted by the Administrator the role of on-scene coordinator for Federal facility projects within its boundaries. The necessary and reasonable expenses of the on-scene coordinator shall be paid to the State by the Agency.

"(j) NATIONAL SECURITY.—

"(1) SITE SPECIFIC PRESIDENTIAL ORDERS.— The President may issue such orders regarding response actions at any specified site or facility of the Department of Energy or the Department of Defense as may be necessary to protect the national security interests of the United States at that site or facility. Such orders may include, where necessary to protect such interests, an exemption from any requirement contained in this title or under title III of the Superfund Amendments of 1985 with respect to the site or facility concerned. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed 1 year. Additional exemptions may be granted each upon the President's issuance of a new order under this paragraph for the site or facility concerned. Each such additional exemption shall be for a specified period which may not exceed 1 year. It is the intention of the Congress that whenever an exemption is issued under this paragraph the response action shall proceed as expeditiously as practicable. The Congress shall be notified periodically of the progress of any response action with respect to which an exemption has been issued under this paragraph.

"(2) CLASSIFIED INFORMATION.—Notwithstanding any other provision of law, all requirements of the Atomic Energy Act and all Executive orders concerning the handling of restricted data and national security information, including 'need to know' requirements, shall be applicable to any grant of access to classified information under the provisions of this Act or under title III of the Superfund Amendments of 1985.".

(b) LIMITED GRANDFATHER.—Section 120(a) of CERCLA shall not apply to any response action or remedial action for which a plan is under development by the Department of Energy on the date of the enactment of this Act with respect to facilities—

(1) owned or operated by the United States and subject to the jurisdiction of such Department,

(2) located in St. Charles and St. Louis counties, Missouri, or the city of St. Louis, Missouri, and

(3) published in the National Priorities List.

In preparing such plans, the Secretary of Energy shall consult the Administrator of the Environmental Protection Agency.

SEC. 121. CLEANUP STANDARDS.

Title I of CERCLA is amended by adding the following new section after section 120:

"SEC. 121. CLEANUP STANDARDS.

"(a) BASIC REQUIREMENTS.—The Administrator shall select appropriate cost-effective remedial actions to be carried out under section 104 or secured under section 106. Such actions—

"(1) shall be in accordance with the National Contingency Plan,

"(2) shall be in accordance with the requirements of this section, and

"(3) shall require that level or standard of control of each hazardous substance or pollutant or contaminant at the facility which is necessary to protect human health and environment.

"(b) PERMANENT SOLUTIONS.—

"(1) GENERAL REQUIREMENT.—If a permanent solution meets the requirements of subsection (a) with respect to a facility and such solution is feasible and achievable, the Administrator shall, to the maximum extent practicable, select such solution as the remedial action for the facility.

"(2) DETERMINATION OF PRACTICABILITY.—For purposes of this section, the Administrator shall determine whether or not a remedial action is practicable by taking into consideration the following factors, among others: availability of technology, installation period, uncertainties related to level of performance of the solution or remedial action, level of public support for the solution or remedial action, and whether or not the solution or remedial action has been achieved in practice at any other facility or site which has characteristics similar to the facility or site concerned.

"(c) NONPERMANENT MEASURES.—If the Administrator determines that a permanent solution is not feasible and achievable with respect to any release or threatened release of a hazardous substance or pollutant or contaminant, the Administrator shall provide such remedial action as he deems necessary to protect human health and the environment in accordance with the provisions of this section.

"(d) TREATMENT OF SITES AND FACILITIES WITH NONPERMANENT SOLUTIONS.—

"(1) PERIODIC REVIEW.—The Administrator shall assure (in cooperation with the State) periodic monitoring and shall periodically review each facility for which the remedy selected under this section does not provide a permanent solution. The purpose of such monitoring and review shall be to determine each of the following:

"(A) Whether or not a permanent solution is available for such facility in accordance with subsections (a) and (b).

"(B) Whether or not the remedy selected is adequately protecting human health and the environment.

"(2) PERMANENT SOLUTION AVAILABLE.—If the Administrator determines that a permanent solution is available for the facility in accordance with subsections (a) and (b), the Administrator shall require that remedial action be undertaken to implement such solution unless the Administrator determines that the existing remedy being implemented at the facility is adequately protecting human health and the environment.

"(3) ADDITIONAL MEASURES.—If the Administrator determines that a permanent solution is not available for the facility in accordance with subsections (a) and (b) and that the remedy implemented at the facility is not adequately protecting human health and the environment, the Administrator shall take or require to be taken such additional remedial action as may be necessary to protect human health and the environment.

"(4) ABOVE-GROUND STRUCTURES.—If the Administrator determines that a permanent solution is not feasible and achievable, the Administrator shall consider remedial actions in which hazardous substances and pollutants and contaminants are securely contained in such above-ground engineered structures.

"(e) SELECTION OF REMEDIAL ACTION.—In evaluating alternative remedial actions (including whether to utilize onsite or offsite remedial actions), the Administrator shall specifically assess the long-term effectiveness of various alternatives, including an assessment of permanent solutions and alternative treatment technologies and resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant, taking into account each of the following:

"(1) The long-term uncertainties associated with land disposal.

"(2) The goals, objectives, and requirements of the Solid Waste Disposal Act.

"(3) The persistence, degradability in nature, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents.

"(4) The potential threat to human health and the environment associated with excavation, transportation, and redisposal.

"(5) Short- and long-term potential for adverse health effects from human exposure.

"(6) Long-term maintenance costs.

"(f) PREFERRED ACTIONS.—Remedial actions which significantly reduce the volume, toxicity, or mobility of the hazardous substance or pollutant or contaminant are to be preferred over remedial actions which do not result in such reductions.

"(g) ONSITE REMEDIAL ACTION.—

"(1) APPLICABILITY.—This subsection shall apply only to hazardous substances and pollutants and contaminants which remain onsite.

"(2) APPLICATION OF OTHER FEDERAL ENVIRONMENTAL STANDARDS AND CRITERIA.—If any—

"(A) standard under one or more provisions of the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Federal Water Pollution Control Act, or the Solid Waste Disposal Act, or

"(B) water quality criteria under any provision of the Federal Water Pollution Control Act, is legally applicable to the hazardous substance or pollutant or contaminant concerned or is relevant and appropriate under the circumstances of the release or threatened release of such hazardous substance or pollutant or contaminant, the remedial action selected under section 104 or secured under section 106 shall require, at the completion of the remedial action, a level or standard of control for such hazardous substance or pollutant or contaminant which is at least equivalent to such legally applicable or relevant and appropriate standards or criteria. In determining whether or not any water quality criteria under the Federal Water Pollution Control Act is relevant and appropriate under the circumstances of the release or threatened release of a hazardous substance or pollutant or contaminant, the Administrator shall consider the following: the designated or potential use of the surface or groundwater, the environmental media affected, the purposes for which such criteria were developed, and the latest information available. In determining a level or standard of control for a hazardous substance or pollutant or contaminant the Administrator shall consider any tolerance level established under the Federal Food, Drug, and Cosmetic Act which is applicable to that hazardous substance or pollutant or contaminant.

"(3) MORE STRINGENT STATE STANDARDS.—In any case in which there is a promulgated standard under a State environmental law which is—

"(A) legally applicable to the hazardous substance or pollutant or contaminant concerned or relevant and appropriate under the circumstances of the release or threatened release of such hazardous substance or pollutant or contaminant; and

"(B) more stringent than the standard which would otherwise be selected under this section, and there is a cost-effective remedial action which will achieve such State standard and meets the requirements of this section, the provisions of subsection (j) shall govern the use of such State standard for purposes of remedial action selected under section 104 or secured under section 106.

"(4) CONTAINMENT.—Where the remedial action selected under section 104 or secured under section 106 at any facility does not include the removal of all hazardous substances and pollutants and contaminants from such facility, any remedial action providing for the containment of any such substance or pollutant or contaminant at such facility shall comply with the standards applicable to facilities required to obtain permits under section 3005 of the Solid Waste Disposal Act.

"(5) CONTAMINATION FROM OTHER SOURCES.—The level or standard of control required in accordance with this subsection shall be required only regarding remedial actions taken with respect to the release or threatened release of a hazardous substance or pollutant or contaminant from the facility concerned and shall not be applicable to contamination from other sources.

"(h) OFFSITE REMEDIAL ACTION.—

"(1) TRANSFER TO A COMPLYING FACILITY.—In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant offsite, such hazardous substance or pollutant or contaminant shall only be transferred to a facility which is operating in compliance with sections 3004 and 3005 of the Solid Waste Disposal Act (or, where applicable, in compliance with the Toxic Substances Control Act). Such substance or pollutant or contaminant may be transferred to a land disposal facility only if the Administrator determines that both of the following requirements are met:

"(A) The unit to which the hazardous substance or pollutant or contaminant is transferred is not releasing any hazardous waste, or constituent thereof, into the groundwater or surface water.

"(B) All such releases from other units at the facility are being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act.

"(2) DEFINITION OF LAND DISPOSAL.—As used in this subsection, (A) the term 'land disposal' has the meaning provided by section 3004 of the Solid Waste Disposal Act, and (B) the term 'hazardous waste' means hazardous waste listed or identified under section 3001 of that Act.

"(i) WAIVERS.—

"(1) IN GENERAL.—The Administrator may waive the application of the requirements of subsection (g) with respect to any facility and select alternative remedial or abatement action which does not comply with such requirements if the Administrator makes any of the following findings:

"(A) The Administrator finds that such alternative remedial or abatement action will provide protection of human health and the environment substantially equivalent to the remedial or abatement action which would be necessary to comply with such requirements.

"(B) The Administrator finds that compliance with such requirements at that facility will result in greater risk to human health and the environment than alternative options. This finding shall be on the basis of a quantitative assessment to the maximum extent possible.

"(C) The Administrator finds that compliance with such requirements is technically impracticable from an engineering perspective.

"(D) The Administrator finds that compliance with such requirements at that facility will consume a disproportionate share of the Fund, taking into account the size and complexity of the facility and benefits to human health and the environment which may be obtained through other uses under this Act of the sums available in the Fund which would be expended to comply with such requirements.

"(E) The Administrator finds and certifies in writing that compliance with such requirements will require the expenditure of private party resources, which expenditure would substantially exceed the expenditures associated with the remedy which would have been selected by the Administrator if the remedy had been financed by the Fund and if the Administrator, without regard to amounts in the Fund, had invoked the waiver under paragraph (4). In applying this subparagraph, the Administrator shall consider the Fund as having a level of funding equivalent to that authorized.

"(2) PRIVATELY FINANCED ACTIONS.—A finding under subparagraph (A), (B), or (C) of paragraph (1) may also be made with respect to remedial action financed in whole or in part by private parties. In such case, the finding shall be made on the basis of the same considerations as would be used with respect to remedial action financed by the Fund.

"(3) RESTRICTIONS.—

"(A) PROHIBITION ON VIOLATION OF CERTAIN LAWS.—No waiver may be granted under this subsection if it would result in a violation of any of the following: the Federal Water Pollution Control Act, the Marine Protection, Research, and Sanctuaries Act of 1972, and the Safe Drinking Water Act.

"(B) SUBPARAGRAPH (E) WAIVERS.—The Administrator may not grant a waiver under subparagraph (E) of paragraph (1) unless—

"(i) the Administrator has first promulgated final regulations establishing procedures for implementing such subparagraph, including health and environmental impact procedures; and

"(ii) the Administrator explains why granting such waiver is in the public interest.

"(j) ONSITE CLEANUP; PERMITS; STATE STANDARDS.—

"(1) FEDERAL AND STATE PERMITS.—This paragraph applies to any remedial action selected by the Administrator under this Act which does not involve the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to an offsite facility. No Federal or State permits shall be required for such remedial actions other than permits under the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, and State groundwater laws, if any. For purposes of expediting such remedial actions, the Administrator may, in consultation with the States, establish consolidated procedures applicable to the issuance of Federal and State permits. No permits shall be required under Federal, State, or local law for any removal action under emergency circumstances under this Act.

"(2) LIMITATIONS REGARDING STATE PERMITS.—

"(A) STANDARDS IDENTIFIED IN NOTIFICATION.—Permits may be required only for those State standards which the State identifies in its notification to the Administrator during the remedial investigation and feasibility study.

"(B) DEADLINE FOR ISSUANCE OF STATE PERMITS.—If a State permit is not issued before completion of the final remedial engineering design, construction and implementation of the remedy shall proceed. The State shall have an additional 30 days to issue the permit. If the State does not issue the permit within such period, the requirement for its issuance shall be deemed to be waived.

"(C) RELATIONSHIP TO REMEDIAL ACTION PLAN.—The permit shall conform to and may not modify the terms of the remedial action plan, including estimated costs. All conflicts between the provisions of the Acts referred to in subparagraph

(A) and this Act shall be resolved in favor of this Act. There shall be no separate State or Federal procedures under any other laws for obtaining or reviewing the permit. Only the procedures provided for under this Act shall apply for such purposes. Nothing in this subparagraph shall be deemed to affect any requirements under the Federal Water Pollution Control Act.

"(D) INJUNCTIONS DURING REVIEW.—Remedial action which is unrelated to or not inconsistent with the State permit shall not be enjoined pending a proceeding to review the permit.

"(E) JURISDICTION TO REVIEW.—The appropriate Federal district court shall have exclusive jurisdiction to resolve all conflicts, disputes, and disagreements over the permit. The court shall not have jurisdiction to review the selection of the remedial action during an action to enforce or review the permit. Only the State attorney general or the Administrator shall have authority to enforce the permits.

"(3) REGULATIONS FOR STATE INVOLVEMENT.—The Administrator shall promulgate regulations providing for substantial and meaningful involvement by each State in initiation, development, and selection of remedial action to be undertaken in that State. The regulations, at a minimum, shall include each of the following:

"(A) State involvement in decisions whether to perform a preliminary assessment and site inspection.

"(B) Allocation of responsibility for hazard ranking system scoring.

"(C) State concurrence in deleting sites from the National Priorities List.

"(D) State participation in long-term planning process for all remedial sites within the State.

"(E) A reasonable opportunity for States to review and comment on each of the following:

"(i) The remedial investigation and feasibility study and all data and technical documents leading to its issuance.

"(ii) The planned remedial action identified in the remedial investigation and feasibility study.

"(iii) The engineering design following selection of the final remedial action.

"(iv) Other technical data and reports relating to implementation of the remedy.

"(v) Any decision by the Administrator to exercise the waiver authority of subsection (i).

"(F) Notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State and an opportunity to participate in such negotiations. Such regulations shall also provide for the States to be given notice and an opportunity to comment on the Administrator's proposed plan for remedial action as well as on alternative plans under consideration. The Administrator's final decision regarding the selection of remedial action shall be accompanied by a response to the comments submitted by the State. Such response shall be provided to the State.

"(G) Prompt notice and explanation of each proposed action, including an explanation regarding any decision under paragraph (4) on compliance with promulgated State standards to the State in which the facility is located.

"(4) STATE SUBSTANTIVE STANDARDS.—The State standards referred to in subsection (g)(3) shall apply to remedial actions selected under section 104 or secured under section 106 unless the Administrator determines that one or more of the following circumstances exists:

"(A) The State has agreed with a decision by the Administrator not to apply the State standard.

"(B) The remedial action selected provides protection of public health and the environment that is substantially equivalent to that provided by the State standard.

"(C) The State has not consistently applied the standard (or planned to apply the standard) in similar circumstances at other remedial actions within the State.

"(D) The Administrator exercises one of the waivers under subsection (i) with respect to the State standard. No waiver under subsection (i)(1)(D) shall apply at any facility owned or operated by an agency or instrumentality of the United States. If the Administrator determines, under this paragraph not to apply a State standard, the application of the State standard shall be determined in accordance with paragraph (5), (6), or (7).

"(5) STATE CONCURRENCE PROCEDURE FOR FUND-FINANCED REMEDIAL ACTIONS.—

"(A) APPLICATION OF PARAGRAPH.—This paragraph applies to remedial action undertaken pursuant to section 104.

"(B) OPPORTUNITY TO CONCUR.—Within 30 days of the publication of the Administrator's final remedial action plan, the State shall notify the Administrator that it concurs or does not concur with any decision of the Administrator under paragraph (4) not to comply with a promulgated State standard or siting requirement. If the State concurs in the decision, the remedial action selected by the Administrator shall proceed through completion. If the State fails to act within 30 days after the close of the comment period, such failure shall be deemed concurrence for purposes of this paragraph.

"(C) STATE PAYMENT.—If the State notifies the Administrator within 30 days of the close of the comment period that it does not concur with the decision under paragraph (4) not to comply with a promulgated State standard or siting requirement, and within 60 days after close of the comment period provides assurances deemed adequate by the Administrator that the State will pay or assure payment of the additional costs attributable to compliance with the State standard or requirement, as determined by the Administrator, the remedial action shall comply with such State standard or requirement and shall proceed through completion. If the State fails to provide such assurances within 60 days, the remedial action selected by the Administrator shall proceed through completion.

"(D) ENFORCEMENT.—The State may enforce any Federal or State standard or requirement to which the remedial action is required to conform under this Act in the United States district court in which the facility concerned is located.

"(E) COST RECOVERY.—In any action under section 107 to recover from responsible parties any additional costs paid by the State to have a remedial action conform to a State standard, the State may recover such additional costs if it establishes, on the administrative record, that the Administrator's decision not to require the remedial action to conform to the State standard was not supported by substantial evidence.

"(6) STATE CONCURRENCE PROCEDURE FOR ACTIONS UNDER SECTION 106.—

"(A) APPLICATION OF PARAGRAPH.—This paragraph shall apply to remedial actions secured under section 106.

"(B) OPPORTUNITY TO CONCUR OR REFUSE TO CONCUR.—Within 30 days of the lodging of the consent decree, the Administrator shall provide an opportunity for the State to concur or not to concur that the remedial action plan embodied in the consent decree properly takes State standards into account. If the State concurs, the State may become a signatory to the consent decree.

"(C) STATE NONCONCURRENCE.—If the State does not concur in the remedial action plan embodied in the consent decree on the basis that State standards have not been properly taken into account, and the State desires to have the remedial action conform to such standards, the State may intervene in the action under section 106, as a matter of right, prior to entry of the consent decree to seek to have the action conform to such State standards. The remedy shall conform to the State standard if the State establishes, on the administrative record, that the Administrator's decision not to have the remedial action conform to the State standard was not supported by substantial evidence. If the court determines that the remedy shall conform to a State standard, the consent decree shall be so modified and the State may become a signatory to the decree. If the court determines that the remedy need not conform to the State standard, and the State pays or assures payment of the additional costs attributable to meeting the State standard, the consent decree shall be modified to incorporate the State standard, and the State shall become a signatory to the decree.

"(D) AUTHORITY OF EPA.—The Administrator may conclude settlement negotiations and enter into consent decrees with potentially responsible parties without State concurrence.

"(E) CONDITIONS.—The Administrator and the State may request the court to include reasonable conditions in any consent decree under section 106 to assure that the remedial design and its implementation meet the conditions and requirements of the remedial action plan.

"(7) STATE CONCURRENCE PROCEDURE FOR REMEDIAL ACTIONS AT FEDERAL FACILITIES.—

"(A) APPLICATION OF PARAGRAPH.—This paragraph shall apply to remedial action at facilities owned or operated by an agency or instrumentality of the United States.

"(B) OPPORTUNITY TO CONCUR OR NOT TO CONCUR.—The State may participate in the development and selection of the remedy and seek to have the remedial action conform to State standards. Within 30 days of the publication of the Administrator's final remedial action plan, the State may concur or not concur that the Administrator has taken proper account of State standards in the final remedial action. If the State concurs, or does not act within 30 days, the remedial action may proceed.

"(C) STATE NONCONCURRENCE.—If the State does not concur as provided in subparagraph (B), and desires to have the remedial action conform to the State standard, the State may maintain an action as provided in subparagraph (D).

"(D) REVIEW OF EPA DECISION.—

"(i) AUTHORITY TO BRING ACTION.—If the Administrator has notified the State of its decision not to require a remedial action which conforms to a State standard, the State may bring an action within 30 days of such notification for the sole purpose of determining whether the Administrator's decision not to adopt the State standard is supported by substantial evidence. Such action shall be brought in the United States district court in the district in which the facility is located.

"(ii) REJECTION OF EPA DECISION.—If the State establishes, on the administrative record, that the Administrator's decision not to adopt a State standard is not supported by substantial evidence, the remedial action shall be modified to conform to such standard.

"(iii) EPA DECISION UPHELD.—If the State fails to establish that the Administrator's decision was not supported by substantial evidence and if the State pays, within 60 days of judgment, the additional costs attributable to meeting the State standard, the remedial action shall be selected to meet the State standard. If the State fails to pay within 60 days, the remedial action that does not meet the State standard shall proceed through completion.

"(E) ENFORCEMENT.—The State may enforce any Federal or State standard or requirement to which the remedial action is required to conform under this Act in the United States district court in the district in which the facility is located.

"(F) INJUNCTIONS.—Nothing in this Act precludes, and the court shall not enjoin, the Federal agency from taking any remedial action unrelated to or not inconsistent with the State standard.

"(G) CONDITIONS.—During an action brought by the State regarding the Administrator's notification of the State requirement to pay the additional costs associated with meeting the State standard, the State may also request the court to establish reasonable conditions to assure that the remedial design and implementation meets the conditions and requirements of the remedial action plan.

"(8) CORRECTIVE ACTION AT FEDERAL FACILITIES.—The waiver under this subsection of any requirement for a permit shall not be construed to exempt any solid waste management unit within the boundaries of a facility owned or operated by a department, agency, or instrumentality of the United States from the corrective action required by section 3004(u) of the Solid Waste Disposal Act for releases of hazardous waste or constituents, unless such unit is within the scope of the response action taken at a site on the National Priorities List under this Act.

"(9) ATTORNEY AND WITNESS FEES.—Whenever a State recovers its additional costs under this subsection from any responsible person, such person shall be liable for the costs incurred by the State in such action, including reasonable attorney and witness fees. Whenever the court upholds a determination under paragraph (4), the State which brought the action under this subsection shall be liable for the costs incurred by the Administrator and the responsible person in such action, including reasonable attorney and witness fees.

"(10) SAVINGS PROVISIONS.—(A) Nothing in this section shall be deemed to affect the authority of any State to undertake a response action under this Act.

"(B) Nothing in this section shall affect the authority of any State to impose, after remedial action is completed, any requirement (including a fee) with respect to any operation and maintenance activities required with respect to a hazardous substance or pollutant or contaminant.

"(11) STATE ENVIRONMENTAL IMPACT REQUIREMENTS.—Prior to commencement of a remedial investigation and feasibility study, the Administrator shall notify the State of such action. If within 60 days thereafter, the State notifies the Administrator of any State procedural requirements which would be applicable under State statutes requiring preparation of environmental impact statements, the Administrator shall, in consultation with the State, establish functionally equivalent procedures governing the preparation of such investigation and study which adopt such State requirements unless the State waives such requirements. Compliance with this subsection shall be deemed to be compliance with such State environmental impact statutes.

"(12) OFFSITE.—Nothing in this subsection shall be construed to affect any requirement of Federal, State, or local law to the extent that such requirement applies to response action involving the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to another facility.

"(13) Consolidation of permit procedures.—If one or more State or Federal permits are required for any response action, the Administrator shall consolidate the procedures, including any requirements for public participation, of such permits with the procedures under this Act. Nothing in this paragraph shall affect the substantive requirements of such permits.

"(k) Destruction of Dioxin Wastes.—

"(1) Treatment technology.—With respect to any remedial action involving a hazardous substance or pollutant or contaminant containing chlorinated or halogenated dioxins or chlorinated or halogenated dibenzofurans, the Administrator shall, to the maximum extent practicable, require treatment technology that provides each of the following:

"(A) A destruction and removal efficiency meeting or exceeding 99.9999 percent.

"(B) A treatment process which minimizes accidental emissions of chlorinated or halogenated dioxins, dibenzofurans, and other highly toxic materials to the environment.

"(C) Protection against emissions of any hazardous substance or pollutant or contaminant into the air during normal operation and equivalent protection during nonsteady operations including start-up, shut-down, and power failures.

"(D) Protection against secondary formation of halogenated dioxins and dibenzofurans.

"(2) REQUIREMENTS.—The requirements specified in paragraph (1) shall not apply if the Administrator determines that—

"(A) an alternative method of treatment or disposal provides comparable or greater protection of human health and the environment, or

"(B) there will be no human exposure to the hazardous substance or pollutant or contaminant containing chlorinated or halogenated dioxins or chlorinated or halogenated dibenzofurans.

"(l) VALUE ENGINEERING REVIEW.—In any evaluation under this section of the cost effectiveness of a response action, the Administrator shall require value engineering review in accordance with this subsection. The Administrator shall require value engineering review for any response action to be carried out under this Act by the United States, a State, or a political subdivision of a State if the cost of the response action, including the cost of removal and construction related to hazardous substances and pollutants and contaminants, and including the cost of operation and maintenance, is projected to exceed $4,000,000. For purposes of this subsection, the term 'value engineering review' means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.".

SEC. 122. SETTLEMENTS.

Title I of CERCLA is amended by adding the following new section after section 121:

"SEC. 122. SETTLEMENTS.

"(a) EPA AUTHORITY TO ENTER INTO AGREEMENTS.—The Administrator, in his discretion, may enter into an agreement with any person (including the owner or operator of the facility from which a release or substantial threat of release emanates, or any other potentially responsible person), to perform any action described in subsection (b) of section 104 or in subsection (a) of section 106 if the Administrator determines that such action will be done properly by such person. If the Administrator decides not to use the procedures in this section, the Administrator shall notify in writing potentially responsible parties at the facility of such decision and the reasons why use of the procedures is inappropriate. The decision of the Administrator not to use the procedures in this section is not subject to judicial review.

"(b) AGREEMENTS WITH POTENTIALLY RESPONSIBLE PARTIES.—

"(1) MIXED FUNDING.—An agreement under this section may provide that the Administrator will reimburse the parties to the agreement from the Fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform but which the Administrator has agreed to finance.

"(2) REVIEWABILITY.—The Administrator's decisions regarding the availability of fund financing under this subsection shall not be subject to judicial review under subsection (d).

"(3) RETENTION OF FUNDS.—If, as part of any agreement, the Administrator will be carrying out any action and the parties will be paying amounts to the Administrator, the Administrator may, notwithstanding any other provision of law, retain and use such amounts for purposes of carrying out the agreement.

"(c) EFFECT OF AGREEMENT.—

"(1) LIMITATION OF LIABILITY.—Whenever the Administrator has entered into an agreement under this section, the liability under this Act of each party to the agreement with respect to liability, including any future liability, arising from the release or threatened release that is the subject of the agreement shall be limited as provided in the agreement in accordance with subsection (f). Nothing in this paragraph shall limit or otherwise affect the authority of any court to review in the consent decree process under subsection (d) any limitation on liability contained in an agreement under this section. In determining the extent to which the liability of parties to an agreement shall be limited under this subsection, the Administrator shall be guided by the principle that a more complete limit of liability shall be given for a more permanent remedy proposed by such parties.

"(2) ACTIONS AGAINST OTHER PERSONS.—If an agreement has been entered into under this section, the Administrator may take any action under section 106 against any person who is not a party to the agreement, once the period for submitting a proposal under subsection (e)(2)(B) has expired. Nothing in this section shall be construed to affect either of the following:

"(A) The liability of any person under section 106 or 107 with respect to any costs or damages which are not included in the agreement.

"(B) The authority of the Administrator to maintain an action under section 106 or 107 against any person who is not a party to the agreement.

"(d) ENFORCEMENT.—

"(1) CLEANUP AGREEMENTS.—

"(A) CONSENT DECREE.—Whenever the Administrator enters into an agreement under this section with any potentially responsible party with respect to action under section 106, following approval of the agreement by the Attorney General, the agreement shall be entered in the appropriate United States district court as a consent decree under that section. The Administrator need not make any finding regarding an imminent and substantial endangerment to the public health or the environment.

"(B) EFFECT.—The entry of any consent decree under this subsection shall not be construed to be an acknowledgment by the parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or welfare or the environment. The participation by any party in the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

"(C) STRUCTURE.—The Administrator may fashion a consent decree so that (i) the entering of such decree and compliance with such decree or with any determination or agreement made pursuant to this section shall not be considered an admission of liability for any purpose, and (ii) the entering of such decree and such compliance and such determination or agreement shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

"(2) PUBLIC PARTICIPATION.—

"(A) FILING OF PROPOSED JUDGMENT.—At least 30 days before a final judgment is entered under paragraph (1), the proposed judgment shall be filed with the court.

"(B) OPPORTUNITY FOR COMMENT.—The Attorney General shall provide an opportunity to persons who are not named as parties to the action to comment on the proposed judgment before its entry by the court as a final judgment. The Attorney General shall consider, and file with the court, any written comments, views, or allegations relating to the proposed judgment. The Attorney General may (i) withdraw or withhold its consent to the proposed judgment if the comments, views, and allegations concerning the judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper, or inadequate, or (ii) oppose an attempt by any person to intervene in the action.

"(3) 104(b) AGREEMENTS.—Whenever the Administrator enters into an agreement under this section with any potentially responsible party with respect to action under section 104(b), the Administrator shall issue an order setting forth the obligations of such party. The United States district court for the district in which the release or threatened release occurs may enforce such order. Any party to an agreement under this section who fails or refuses to comply with the requirements of the order shall be liable for a civil penalty in an amount not to exceed $25,000 for each day during which such failure or refusal continues.

"(e) SPECIAL NOTICE PROCEDURES.—

"(1) NOTICE.—Whenever the Administrator determines that a period of negotiation under this subsection would facilitate an agreement under this subsection with potentially responsible parties for taking action under subsection (b) of section 104, or action under section 106, the Administrator shall so notify all such parties and shall provide them with information concerning each of the following:

"(A) The identity of other notice recipients.

"(B) The volume and nature of hazardous substances at the facility, to the extent such information is available.

"(C) A ranking by volume of the substances at the facility, to the extent such information is available.

The Administrator shall make the information referred to in this paragraph available in advance of notice under this paragraph upon the request of a potentially responsible party in accordance with procedures provided by the Administrator. The provisions of subsection (e) of section 104 regarding protection of confidential information apply to information provided under this paragraph.

"(2) NEGOTIATION.—

"(A) MORATORIUM.—Except as provided in this subsection, the Administrator may not commence action under section 104(a) or take any action under section 106 for 120 days after providing notice and information under this subsection with respect to such action. Except as provided in this subsection, the Administrator may not commence action under section 104(b) for 90 days after providing notice and information under this subsection with respect to such action.

"(B) PROPOSALS.—Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 106 shall have 60 days from the date of receipt of such notice to make a proposal to the Administrator for undertaking or financing the action under section 106. Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 104(b) shall have 60 days from the date of receipt of such notice to make a proposal to the Administrator for undertaking or financing the action under section 104(b).

"(C) ADDITIONAL PARTIES.—If an additional potentially responsible party is identified during the negotiation period or after an agreement has been entered into under this subsection concerning a release or threatened release, the Administrator may bring the additional party into the negotiation or enter into a separate agreement with such party.

"(3) FAILURE TO PROPOSE.—If the Administrator determines that a good faith proposal for undertaking or financing action under section 106 has not been submitted within 60 days of the provision of notice pursuant to this subsection, the Administrator may thereafter commence action under section 104(a) or take an action against any person under section 106 of this Act. If the Administrator determines that a good faith proposal for undertaking or financing action under section 104(b) has not been submitted within 60 days after the provision of notice pursuant to this subsection, the Administrator may thereafter commence action under section 104(b).

"(4) SIGNIFICANT PUBLIC HEALTH THREATS.—Nothing in this subsection shall limit the Administrator's authority to undertake response action regarding a significant threat to public health within the negotiation period established by this subsection.

"(f) COVENANT NOT TO SUE.—

"(1) IN GENERAL.—The Administrator may, in his discretion, provide any person with a covenant not to sue concerning any liability under this Act, including future liability, resulting from a release or threatened release of a hazardous substance addressed by a remedial action, whether that action is onsite or offsite, if each of the following conditions are met:

"(A) The covenant not to sue is in the public interest.

"(B) The covenant not to sue would expedite response action consistent with the National Contingency Plan under section 105 of this Act.

"(C) The person is in full compliance with a consent decree under section 106 (including a consent decree entered into in accordance with this section) for response to the release or threatened release concerned.

"(D) The response action has been approved by the Administrator.

"(2) REQUIREMENT THAT REMEDIAL ACTION BE COMPLETED.—A covenant not to sue concerning future liability shall not take effect until the Administrator certifies that remedial action has been completed in accordance with the requirements of this Act at the facility that is the subject of such covenant.

"(3) GROUNDWATER AND SURFACE WATER PROTECTION FUND.—

"(A) ESTABLISHMENT OF FUND.—There is established in the Treasury a fund to be known as the 'Groundwater and Surface Water Protection Fund', consisting of amounts required to be contributed under a covenant not to sue under this subsection.

"(B) USE OF FUND.—Amounts of contributions made to the Groundwater and Surface Water Protection Fund with respect to a facility shall be available for a period of ten years only for remedial actions required at such facility after the Administrator makes the certification with respect to such facility under paragraph (2). After the end of such period, such amounts shall be available for remedial actions at any facility for which a certification has been made under paragraph (2) and with respect to which contributions are made under this subsection.

"(4) FACTORS.—In assessing the appropriateness of a covenant not to sue and any condition to be included in a covenant not to sue (including the amount of contributions required to be paid to the Groundwater and Surface Water Protection Fund), the Administrator shall consider whether the covenant or condition is in the public interest on the basis of such factors as the following:

"(A) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned.

"(B) The nature of the risks remaining at the facility.

"(C) The extent to which performance standards are included in the order or decree.

"(D) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

"(E) The extent to which the technology used in the response action is demonstrated to be effective.

"(F) Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.

"(G) Whether a waiver has been granted under section 121(i)(1)(E).

"(5) SATISFACTORY PERFORMANCE.—Any limitation of liability provided to a party under this subsection shall be subject to the satisfactory performance by such party of its obligations under the agreement concerned.

"(6) ADDITIONAL CONDITIONS FOR FUTURE LIABILITY.—A covenant not to sue a person concerning future liability shall include one of the following:

"(A) An exception to the covenant that allows the Administrator to sue such person concerning future liability resulting from the release or threatened release that is the subject of the covenant where such liability arises out of conditions which are unknown at the time the Administrator certifies under paragraph (2) that remedial action has been completed at the facility concerned.

"(B) A requirement that such person make contributions to the Groundwater and Surface Water Protection Fund sufficient to provide resources likely to be adequate to clean up any groundwater or surface water contamination resulting from conditions which were unknown or reasonably could not have been known at the time the Administrator certifies under paragraph (2) that remedial action has been completed at the facility concerned. The Administrator shall determine whether resources are adequate to clean up such contamination on the basis of—

"(i) the likelihood of groundwater or surface water contamination resulting from conditions which are unknown at the time the remedial action is completed, and

"(ii) the probable cost of cleanup in the event of groundwater or surface water contamination.

"(g) DE MINIMIS SETTLEMENTS.—

"(1) EXPEDITED FINAL SETTLEMENT.—Whenever practicable and in the public interest, as determined by the Administrator, the Administrator shall as promptly as possible reach a final settlement with a potentially responsible party in an administrative or civil action under section 106 or 107 if such settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the Administrator, the conditions in either of the following subparagraph (A) or (B) are met:

"(A) Both of the following are minimal in comparison to other hazardous substances at the facility:

"(i) The amount of the hazardous substances contributed by that party to the facility.

"(ii) The toxic or other hazardous effects of the substances contributed by that party to the facility.

"(B) The potentially responsible party—

"(i) is the owner of the real property on or in which the facility is located;

"(ii) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and

"(iii) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

This subparagraph does not apply if the potentially responsible party purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, or disposal of any hazardous substance.

"(2) RELEASE FROM LIABILITY.—The Administrator may provide a covenant not to sue with respect to the facility concerned, or grant a release from liability with respect to the facility concerned, to any party who has entered into a settlement under this subsection unless such a covenant or release would be inconsistent with the public interest as determined under subsection (f).

"(3) EXPEDITED RELEASES.—The Administrator shall reach any such settlement, grant any such covenant not to sue, or grant any such release from liability as soon as possible after the Administrator has available the information necessary to reach such a settlement, grant such a covenant, or grant such a release from liability.

"(4) CONSENT DECREE OR ADMINISTRATIVE ORDER.—A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. The district court for the district in which the release or threatened release occurs may enforce such order.

"(5) EFFECT OF RELEASE.—A party who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement. This paragraph does not apply to a settlement that was achieved through fraud, misrepresentation, other misconduct by one of the parties to the settlement, or mutual mistake of fact.

"(6) SETTLEMENTS WITH OTHER POTENTIALLY RESPONSIBLE PARTIES.—Nothing in this subsection shall be construed to affect the authority of the Administrator to reach settlements with other potentially responsible parties under this Act.

"(h) EPA COST RECOVERY SETTLEMENT AUTHORITY.—

"(1) AUTHORITY TO SETTLE.—The head of any department or agency with authority to undertake a response action under this Act pursuant to the national contingency plan may consider, compromise, and settle a claim under section 107 for costs incurred by the United States Government if the claim has not been referred to the Department of Justice for further action. Any claim for costs and damages which in the aggregate is in excess of $500,000 (excluding interest) may be compromised only with the prior written approval of the Attorney General or his designee.

"(2) FINALITY OF SETTLEMENT.—A settlement under this subsection shall be final and conclusive as to the matters addressed in the settlement, unless the settlement was achieved through fraud, misrepresentation, other misconduct by one of the parties to the settlement, or mutual mistake of fact. No court shall have jurisdiction to review the settlement unless there is a verified complaint with supporting affidavits attesting to specific instances of such fraud, misrepresentation, other misconduct, or mutual mistake of fact.

"(3) USE OF ARBITRATION.—Arbitration in accordance with regulations promulgated under this subsection may be used as a method of settling claims of the United States Government under this section. After consultation with the Attorney General, the department or agency head may establish and publish regulations for the use of arbitration or settlement under this subsection. An arbitration under this subsection shall be final and conclusive to the extent provided in paragraph (2).

"(4) RECOVERY OF CLAIMS.—If any person fails to pay a claim that has been settled under this subsection, the department or agency head shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount of such claim, plus costs, attorneys' fees, and interest from the date of the settlement. In such an action, the terms of the settlement shall not be subject to review.

"(5) CLAIMS FOR CONTRIBUTION.—A person who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement. This paragraph does not apply to a settlement which was achieved through fraud, misrepresentation, other misconduct by one of the parties to the settlement, or mutual mistake of fact.

"(i) SETTLEMENT PROCEDURES.—

"(1) PUBLICATION IN FEDERAL REGISTER.—At least 30 days before any settlement (including any settlement arrived at through arbitration) may become final under subsection (h), or under subsection (g) in the case of a settlement embodied in an administrative order, the head of the department or agency which has jurisdiction over the proposed settlement shall publish in the Federal Register notice of the proposed settlement. The notice shall identify the facility concerned and the parties to the proposed settlement.

"(2) COMMENT PERIOD.—For a 30-day period beginning on the date of publication of notice of a proposed settlement under paragraph (1), the head of the department or agency which has jurisdiction over the proposed settlement shall provide an opportunity for persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement.

"(3) CONSIDERATION OF COMMENTS.—The head of the department or agency shall consider any comments filed under paragraph (2) in determining whether or not to consent to the proposed settlement and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

"(j) NATURAL RESOURCES.—

"(1) NOTIFICATION OF TRUSTEE.—Where a release or threatened release of any hazardous substance that is the subject of negotiations under this section may have resulted in damages to natural resources under the trusteeship of the United States, the Administrator shall notify the Federal natural resource trustee of the negotiations and shall encourage the participation of such trustee in the negotiations.

"(2) COVENANT NOT TO SUE.—An agreement under this section may contain a covenant not to sue under section 107(a)(4)(C) for damages to natural resources under the trusteeship of the United States resulting from the release or threatened release of hazardous substances that is the subject of the agreement, but only if the Federal natural resource trustee has agreed in writing to such covenant. The Federal natural resource trustee may agree to such covenant if the potentially responsible party agrees to undertake appropriate actions necessary to protect and restore the natural resources damaged by such release or threatened release of hazardous substances.

"(k) DEFINITION OF POTENTIALLY RESPONSIBLE PARTY.—As used in this section and section 119, the term 'potentially responsible party' means, with respect to any release or threatened release, a person against whom an action could be brought under section 106 with respect to such release or a person who would be liable under section 107 if response costs were incurred by the Administrator with respect to such release or threatened release.

"(l) SECTION NOT APPLICABLE TO VESSELS.—The provisions of this section shall not apply to a release from a vessel.".

SEC. 123. REIMBURSEMENT TO LOCAL GOVERNMENTS.

(a) Title I of CERCLA is amended by adding the following after section 122:

"SEC. 123. REIMBURSEMENT TO LOCAL GOVERNMENTS.

"(a) APPLICATION.—Any general purpose unit of local government for a political subdivision which is affected by a release or threatened release at any facility may apply to the Administrator for reimbursement under this section.

"(b) REIMBURSEMENT.—

"(1) TEMPORARY EMERGENCY MEASURES.—The Administrator is authorized to reimburse local community authorities for expenses incurred in carrying out temporary emergency measures necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance or pollutant or contaminant. Such measures may include, where appropriate, security fencing to limit access, response to fires and explosions, and other measures which require immediate response at the local level.

"(2) PROTECTION OF PUBLIC DRINKING WATER.—The Administrator is authorized to reimburse local communities for expenses incurred in carrying out emergency measures for the protection of public drinking water supplies as a result of contamination by the release of any hazardous substance or pollutant or contaminant into existing sources of public drinking water. Such measures may include, where appropriate, treatment to remove contaminants and other measures which require immediate response at the local level.

"(c) AMOUNT.—The amount of any reimbursement to any local authority under subsection (b)(1) may not exceed $25,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the units of local government having jurisdiction over the political subdivision in which the facility is located.

"(d) PROCEDURE.—Reimbursements authorized pursuant to this section shall be in accordance with rules promulgated by the Administrator within one year after the date of the enactment of this section.".

SEC. 124. LANDFILL GAS OPERATORS.

Title I of CERCLA is amended by adding the following after section 123

"SEC. 124. LANDFILL GAS OPERATORS.

"(a) EXEMPTION FROM CERTAIN LIABILITY.—

"(1) GENERAL RULE.—Notwithstanding the provisions of section 114, a landfill gas operator shall not be liable for the following in an action under section 106 or 107 of this Act (including an action for contribution or indemnification):

"(A) Any amount with respect to a release or threatened release from a landfill gas operation.

"(B) Any amount resulting from the operation of a landfill gas operation.

"(C) Costs of cleanup, removal, response and remedial actions, and claims for natural resources damages.

The exemption from liability under this paragraph also applies in any action with respect to a release or threatened release of a hazardous substance from a landfill gas operation for recovery of any amount referred to in subparagraph (A), (B), or (C) under the laws of any State or political subdivision of a State.

"(2) NEGLIGENCE, ETC.—Paragraphs (1) and (2) shall not apply in the case of a release that is caused by conduct of the landfill gas operator which is negligent or grossly negligent or which constitutes intentional misconduct.

"(b) SAVINGS PROVISIONS.—

"(1) LIABILITY OF OTHER PERSONS.—Nothing in this section shall affect the liability under this Act or under any other authority of Federal or State law of any person, other than a landfill gas operator.

"(2) BURDEN OF PLAINTIFF.—Nothing in this section shall affect the plaintiff's burden of establishing liability under this title.

"(c) CONDENSATE.—

"(1) EXCLUSION.—Except as provided in paragraph (2), a landfill gas operation shall not be deemed to be management, generation, transportation, treatment, storage, or disposal of any hazardous or liquid waste within the meaning of subtitle C of the Solid Waste Disposal Act.

"(2) REGULATION.—If the aqueous or hydrocarbon phase of the condensate or any other waste material removed from gas recovered from a landfill meets any of the characteristics identified under section 3001 of the Solid Waste Disposal Act, such condensate phase or other waste material shall be deemed a hazardous waste under subtitle C of the Solid Waste Disposal Act and shall be regulated accordingly under such subtitle.

"(3) RETURN OF CONDENSATE.—Condensate removed from gas recovered by a landfill gas operator shall not be returned to the landfill in a container, unless such condensate is treated so that it is no longer a free liquid.

"(d) DEFINITIONS.—As used in this section—

"(1) LANDFILL GAS OPERATION.—The term 'landfill gas operation' means the installation or operation of a system for the recovery or processing of methane from a landfill.

"(2) LANDFILL GAS OPERATOR.—The term 'landfill gas operator' means the owner or operator of a landfill gas operation.".

SEC. 125. SECTION 3001(b)(3)(A)(i) WASTE.

Title I of CERCLA is amended by adding after section 124 the following new section:

"SEC. 125. SECTION 3001(b)(3)(A)(i) WASTE.

"(a) REVISION OF HAZARD RANKING SYSTEM.—This section shall apply only to facilities which are not included or proposed for inclusion on the National Priorities List and which contain substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act. As expeditiously as practicable, the Administrator shall revise the hazard ranking system in effect under the National Contingency Plan with respect to such facilities in a manner which assures appropriate consideration of each of the following site-specific characteristics of such facilities:

"(1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison thereof with other wastes.

"(2) The extent of, and potential for, release of such hazardous constituents into the environment.

"(3) The degree of risk to human health and the environment posed by such constituents.

"(b) INCLUSION PROHIBITED.—Until the hazard ranking system is revised as required by this section, the Administrator may not include on the National Priorities List any facility which contains substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act on the basis of an evaluation made principally on the volume of such waste and not on the concentrations of the hazardous constituents of such waste. Nothing in this section shall be construed to affect the Administrator's authority to include any such facility on the National Priorities List based on the presence of other substances at such facility or to exercise any other authority of this Act with respect to such other substances.".

SEC. 126. WORKER PROTECTION STANDARDS.

Title I of the CERCLA is amended by adding the following new section after section 125.

"SEC. 126. WORKER PROTECTION STANDARDS.

"(a) ISSUANCE.—The Secretary of Labor shall, pursuant to section 6 of the Occupational Safety and Health Act of 1970, issue, within one year after the date of the enactment of this section, standards for the health and safety protection of employees, including employees of State and local governments, engaged in hazardous waste operations.

"(b) MINIMUM GENERAL REQUIREMENTS.—Such standards shall include, but not be limited to, the following worker protection provisions:

"(1) SITE ANALYSIS.—Requirements for a formal hazard analysis of the site and development of a site specific plan for worker protection.

"(2) TRAINING.—Requirements for contractors to provide initial and routine training of workers before such workers are permitted to engage in hazardous waste operations which would expose them to toxic substances.

"(3) MEDICAL SURVEILLANCE.—A program of regular medical examination, monitoring, and surveillance of workers engaged in hazardous waste operations which would expose them to toxic substances.

"(4) PROTECTIVE EQUIPMENT.—Requirements for appropriate personal protective equipment, clothing, and respirators for work in hazardous waste operations.

"(5) ENGINEERING CONTROLS.—Requirements for engineering controls concerning the use of equipment and exposure of workers engaged in hazardous waste operations.

"(6) MAXIMUM EXPOSURE LIMITS.—Requirements for maximum exposure limitations for workers engaged in hazardous waste operations, including necessary monitoring and assessment procedures.

"(7) Informational program.—A program to inform workers engaged in hazardous waste operations of the nature and degree of toxic exposure likely as a result of such hazardous waste operations.

"(8) Handling.—Requirements for the handling, transporting, labeling, and disposing of hazardous wastes.

"(9) New technology program.—A program for the introduction of new equipment or technologies that will maintain worker protections.

"(10) Decontamination procedures.—Procedures for decontamination.

"(11) Emergency response.—Requirements for emergency response and protection of workers engaged in hazardous waste operations.

"(c) Specific Training Standards.—

"(1) Offsite training; field experience.—The training standards issued under subsection (b)(2) shall require that general site workers such as equipment operators, general laborers, and other supervised personnel receive a minimum of 40 hours of initial instruction off the site, and a minimum of three days of actual field experience under the direct supervision of a trained, experienced supervisor, at the time of assignment. Workers who may be exposed to unique or special hazards shall be provided additional training.

"(2) TRAINING OF SUPERVISORS.—Such training standards shall require that onsite management and supervisors directly responsible for the hazardous waste operations, such as foremen, receive the same training as general site workers set forth in paragraph (1) of this subsection and at least eight additional hours of specialized training on managing hazardous waste operations.

"(3) CERTIFICATION; ENFORCEMENT.—Such training standards shall contain provisions for certifying that general site workers and supervisors have received the specified training and shall prohibit any individual who has not received the specified training from engaging in hazardous waste operations covered by the standard.

"(4) TRAINING OF EMERGENCY RESPONSE PERSONNEL.—Such training standards shall set forth requirements for the training of workers who are responsible for responding to hazardous emergency situations who may be exposed to toxic substances in carrying out their responsibilities.

"(d) DEADLINE FOR INTERIM REGULATIONS.—The Secretary of Labor shall issue interim final rules under this section within 60 days after the date of the enactment of this section which shall provide no less protection under this section for workers employed by contractors and emergency response workers than the protections contained in the Environmental Protection Agency Manual (1981) 'Health and Safety Requirements for Employees Engaged in Field Activities' and existing standards under the Occupational Safety and Health Act of 1970 found in subpart C of part 1926 of title 29 of the Code of Federal Regulations.

"(e) GRANT PROGRAM.—

"(1) GRANT PURPOSES.—Grants for the training and education of workers who are or may be engaged in activities related to hazardous waste removal or containment or emergency response may be made under this subsection.

"(2) ADMINISTRATION.—Grants under this subsection shall be administered by the National Institute of Occupational Safety and Health.

"(3) GRANT RECIPIENTS.—Grants shall be awarded to nonprofit organizations which demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be engaged in hazardous waste removal or containment or emergency response operations.

"(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the general fund of the Treasury for grants under this subsection $10,000,000 per fiscal year for each of the fiscal years 1986, 1987, 1988, 1989, and 1990.".

SEC. 127. LIABILITY LIMITS FOR OCEAN INCINERATION VESSELS.

(a) DEFINITION.—Section 101 of CERCLA is amended by adding at the end the following new paragraph:

"(33) 'incineration vessel' means any vessel which carries hazardous substances for the purpose of incineration of such substances, during any period when such substances or residues of such substances are on board the vessel.".

(b) LIABILITY.—Section 107 of CERCLA is amended—

(1) in subsection (a)(3) by inserting "or incineration vessel" after "facility";

(2) in subsection (a)(4) by inserting ", incineration vessels" after "facilities";

(3) in subparagraph (A) of subsection (c)(1) by inserting ", other than an incineration vessel," after "vessel";

(4) in subparagraph (B) of subsection (c)(1) by inserting "other than an incineration vessel," after "other vessel,"; and

(5) in subparagraph (D) of subsection (c)(1) by inserting "any incineration vessel or for" before "any facility".

(c) Financial Responsibility.—Section 108(a) of CERCLA is amended—

(1) in paragraph (1) by inserting "to cover the liability prescribed under paragraph (1) of section 107(a) of this Act" after "whichever is greater)";.

(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by striking out "paragraphs (1) of" in paragraphs (3) and (4), as so redesignated; and

(3) by inserting after paragraph (1) the following new paragraph:

"(2) In addition to the financial responsibility required by paragraph (1) of this subsection, the Administrator may require additional evidence of financial responsibility for incineration vessels in such amounts as the Administrator deems appropriate, taking into account the potential risks posed by incineration and transport for incineration, and by any other factors deemed relevant.".

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. POST CLOSURE.

(a) REPEAL OF POST-CLOSURE PROVISIONS.—Sections 107(k) and 111(j) of CERCLA are hereby repealed. Section 101(11) of CERCLA is amended by striking out "or, in the case of" and all that follows through the semicolon at the end thereof and inserting in lieu thereof a semicolon.

(b) POST-CLOSURE PROGRAM.—The Comptroller General shall conduct a study of options for a program for the management of the liabilities associated with hazardous waste disposal sites after their closure.

(c) PROGRAM ELEMENTS.—The program referred to in subsection (b) shall be designed to assure each of the following:

(1) Incentives are created and maintained for the safe management and disposal of hazardous wastes so as to assure protection of human health and the environment.

(2) Members of the public will have reasonable confidence that hazardous wastes will be managed and disposed of safely and that resources will be available to address any problems that may arise from the release or off-site migration of hazardous wastes from

disposal sites, and to cover costs of long-term monitoring, care, and maintenance of such sites.

(3) Persons who are or seek to become owners and operators of hazardous waste disposal facilities will be able to manage their potential future liabilities and to attract the investment capital necessary to build, operate, and close such facilities in a manner which assures protection of human health and the environment.

(d) PROCEDURES.—In carrying out the responsibilities of this section, the Comptroller General shall consult with the Administrator, the Secretary of Commerce, the Secretary of the Treasury, and the heads of other appropriate Federal agencies.

(e) CONSIDERATION OF OPTIONS.—In conducting the study under this section, the Comptroller General shall consider all options which may serve the purposes set forth in subsection (c) including each of the following:

(1) Closure requirements and financial responsibility requirements.

(2) Private insurance.

(3) Insurance provided by the Federal Government.

(4) Coinsurance, reinsurance, or pooled-risk insurance, whether provided by the private sector or provided or assisted by the Federal Government.

(5) Reinstitution of and modification to the Postclosure Liability Trust Fund.

(6) Creation of a new program to be administered by a new or existing Federal agency or by a federally chartered corporation.

(f) RECOMMENDATIONS.—The Comptroller General shall consider options for funding any program under this section and shall, to the extent necessary, make recommendations to the appropriate committees of Congress for additional authority to implement such program.

SEC. 202. TRANSPORTATION OF HAZARDOUS MATERIALS.

Section 306 of CERCLA is amended by inserting after "listed" each place it appears in subsections (a) and (b) "and regulated".

SEC. 203. STATE PROCEDURAL REFORM.

(a) IN GENERAL.—Title III of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 309. ACTIONS UNDER STATE LAW FOR DAMAGES FROM EXPOSURE TO HAZARDOUS SUBSTANCES.

"(a) STATE STATUTES OF LIMITATIONS FOR HAZARDOUS SUBSTANCE CASES.—

"(1) EXCEPTION TO STATE STATUTES.—In the case of any action brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility, if the applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the federally required commencement date, such period shall commence at the Federally required commencement date in lieu of the date specified in such State statute.

"(2) STATE LAW GENERALLY APPLICABLE.—Except as provided in paragraph (1), the statute of limitations established under State law shall apply in all actions brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility.

"(3) ACTIONS UNDER SECTION 107.—Nothing in this section shall apply with respect to any cause of action brought under section 107 of this Act.

"(b) DEFINITIONS.—As used in this section—

"(1) TITLE I TERMS.—The terms used in this section shall have the same meaning as when used in title I of this Act.

"(2) APPLICABLE LIMITATIONS PERIOD.—The term 'applicable limitations period' means the period specified in a statute of limitations during which a civil action referred to in subsection (a)(1) may be brought.

"(3) COMMENCEMENT DATE.—The term 'commencement date' means the date specified in a statute of limitations as the beginning of the applicable limitations period.

"(4) FEDERALLY REQUIRED COMMENCEMENT DATE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'federally required commencement date' means the date the plaintiff knew (or reasonably should have known) that the personal injury or property damages referred to in subsection (a)(1) were caused or contributed to by the hazardous substance or pollutant or contaminant concerned.

"(B) SPECIAL RULES.—In the case of a minor or incompetent plaintiff, the term 'federally required commencement date' means the later of the date referred to in subparagraph (A) or the following:

"(i) In the case of a minor, the date on which the minor reaches the age of majority, as determined by State law, or has a legal representative appointed.

"(ii) In the case of an incompetent individual, the date on which such individual becomes competent or has had a legal representative appointed.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) of this section shall take effect with respect to actions brought after December 11, 1980.

SEC. 204. CONFORMING AMENDMENT TO FUNDING PROVISIONS.

(a) HAZARDOUS SUBSTANCES SUPERFUND.—Section 221(a) of CERCLA is amended by striking out "Hazardous Substance Response Trust Fund" and inserting in lieu thereof "Hazardous Substances Superfund".

(b) CROSS REFERENCE TO FUNDING PROVISIONS.—Section 221(c) of CERCLA is amended to read as follows:

"(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Response Trust Fund shall be available for expenditure only as provided in section 111 of this Act.".

SEC. 205. CLEANUP OF PETROLEUM FROM LEAKING UNDERGROUND STORAGE TANKS.

(a) DEFINITION OF PETROLEUM.—Section 9001(2)(B) of the Solid Waste Disposal Act is amended by striking out all that follows "petroleum"and inserting in lieu thereof a period. Section 9001 of such Act is amended by adding at the end thereof the following:

"(8) The term 'petroleum' means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).".

(b) STATE INVENTORIES.—Section 9002 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(c) STATE INVENTORIES.—Each State shall make 2 separate inventories of all underground storage tanks in such State containing regulated substances, and those of such tanks from which there is a known release of regulated substances. One inventory shall be made with respect to petroleum and one with respect to other regulated substances. In making such inventories, the State shall utilize the notification procedures and forms developed pursuant to subsections (a) and (b) of this section. Each State shall submit its inventories to the Administrator not later than November 8, 1986.".

(c) EPA RESPONSE PROGRAM.—Section 9003 of the Solid Waste Disposal Act is amended by adding after subsection (g) the following new subsection:

"(h) EPA RESPONSE PROGRAM FOR PETROLEUM.—

"(1) BEFORE (c)(4) REGULATIONS. Before the effective date of corrective action regulations under subsection (c)(4), the Administrator is authorized to—

"(A) undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the Administrator, to protect human health and the environment; or

"(B) require the owner or operator of the underground storage tank to undertake such corrective action with respect to any such release unless the Administrator determines that such action will not be carried out properly by such owner or operator.

The corrective action undertaken or required under this paragraph shall be such as may be necessary to protect human health and the environment. In undertaking or requiring such corrective action, the Administrator shall take into account the distinctions referred to in subsection (b). The Administrator shall use funds in the Leaking Underground Storage Tank Trust Fund for payment of costs incurred for corrective action under subparagraph (A). Subject to the priority requirements of paragraph (3), the Administrator shall give priority in undertaking such actions under subparagraph (A) to cases where the Administrator cannot identify a solvent owner or operator of the tank who will undertake the action properly.

"(2) AFTER (c)(4) REGULATIONS.—Following the effective date of regulations under subsection (c)(4), all actions of the Administrator (or ordered by the Administrator) described in paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date, the Administrator may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if such action is necessary, in the judgment of the Administrator, to protect human health and the environment and one or more of the following situations exists:

"(A) No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is—

"(i) an owner or operator of the tank concerned,

"(ii) subject to such corrective action regulations, and

"(iii) capable of carrying out such corrective action properly.

"(B) A situation exists which requires prompt action by the Administrator under this paragraph to protect human health and the environment.

"(C) The owner or operator of the tank has failed or refused to comply with an order of the Administrator under section 9006 to comply with the corrective action regulations.

"(3) PRIORITY OF CORRECTIVE ACTIONS.—The Administrator shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment.

"(4) CORRECTIVE ACTION ORDERS.—The Administrator is authorized to issue orders to the owner or operator of an underground storage tank to carry out subparagraph (B) of paragraph (1) or to carry out regulations issued under subsection (c)(4). Such orders shall be issued and enforced in the same manner and subject to the same requirements as orders under section 9006.

"(5) ALLOWABLE CORRECTIVE ACTIONS.—The corrective actions undertaken by the Administrator under paragraph (1) or (2) may include temporary or permanent relocation of residents and alternative household water supplies. In connection with the performance of any corrective action under paragraph (1) or (2), the Administrator may also determine the health effects of the release concerned. The costs of any study to determine such effects shall not be treated as corrective action for purposes of paragraph (6), relating to cost recovery.

"(6) RECOVERY OF COSTS.—

"(A) IN GENERAL.—Whenever costs have been incurred by the Administrator, or by a State pursuant to paragraph (7), for undertaking corrective action with respect to the release of petroleum from an underground storage tank, the owner and operator of such tank shall be liable to the Administrator or the State for such costs. The liability under this paragraph shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act.

"(B) INTERIM LIMIT ON LIABILITY.—

"(i) INITIAL CORRECTIVE ACTION.— Except as provided in clause (ii) of this subparagraph and subparagraph (C) and until a determination is made under subparagraph (D), the maximum liability under this paragraph for each corrective action undertaken at a facility at which a release of petroleum from an underground storage tank occurs shall be—

"(I) $1,000,000 in the case of an operator who is not an owner and who operates seven or fewer tanks containing petroleum at such facility;

"(II) $3,000,000 in the case of an owner who owns seven or fewer tanks containing petroleum at such facility; and

"(III) $5,000,000 in the case of an owner or operator who owns or operates more than seven such tanks at such facility.

"(ii) INCREASED LIMITS.—Except as provided in subparagraph (C) and until a determination is made under subparagraph (D), the maximum liability under this paragraph for each corrective action undertaken at a facility at which a release of petroleum from an underground storage tank occurs shall be—

"(I) $10,000,000 in the case of an owner or operator whose gross assets are more than $1,000,000,000 but not more than $5,000,000,000;

"(II) $25,000,000 in the case of an owner or operator whose gross assets are more than $5,000,000,000 but not more than $10,000,000,000; and

"(III) $50,000,000 in the case of an owner or operator whose gross assets are more than $10,000,000,000.

"(iii) ADDITIONAL CORRECTIVE ACTION.—Additional corrective action which is required to respond to a release of petroleum from an underground storage tank which occurs after completion of corrective action in response to an earlier release from such tank shall be treated as a separate corrective action for purposes of clauses (i) and (ii) of this subparagraph.

"(iv) APPLICATION.—The limitation on liability under this subparagraph shall apply only with respect to liability under this paragraph for costs incurred by the Administrator or a State for undertaking corrective action with respect to the release of petroleum from an underground storage tank. Such limitation shall not affect the liability of any person under any other authority of law for any other costs or damages.

"(C) LIMITATIONS INAPPLICABLE.—The limitations under subparagraph (B) shall not apply if—

"(i) the release or threat of release was the result of willful misconduct or gross negligence within the privity or knowledge of such person; or

"(ii) the person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with corrective action activities under this Act.

"(D) PERMANENT REGULATIONS.—At the time financial responsiblity regulations are promulgated by the Administrator under this section, the Administrator shall determine whether limitations on the liability imposed under subparagraph (A) are appropriate. At such time, the Administrator may, by regulation, establish classes or categories of underground storage tanks and establish lower limits on liability than the limits prescribed by subparagraph (B) for such classes or categories, if the Administrator determines it appropriate on the basis of the following factors:

"(i) the size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks;

"(ii) the likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category;

"(iii) the economic impact of the limits on owners and operators of each such class, particularly relating to the small business segment of the petroleum marketing industry;

"(iv) the results of studies and actions undertaken in accordance with subsection (g); and

"(v) such other factors as the Administrator deems pertinent.

"(E) EFFECT ON LIABILITY.—

"(i) NO TRANSFERS OF LIABILITY.—No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this subsection, to any other person the liability imposed under this subsection. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

"(ii) NO BAR TO CAUSE OF ACTION.—Nothing in this subsection, including the provisions of clause (i) of this subparagraph, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

"(F) FACILITY.—For purposes of this paragraph, the term 'facility' means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owner or operator and located on a single parcel of property (or on any contiguous or adjacent property).

"(7) STATE AUTHORITIES.—Whenever a State has primary enforcement responsibility under section 9004, the State may submit to the Administrator a proposal to exercise the authorities of the Administrator under paragraphs (1), (2), (3), (4), (5), and (6) of this subsection. If the Administrator determines that such State has demonstrated the ability to exercise and enforce such authorities in a manner substantially equivalent to the Federal program under this subsection, the Administrator may delegate such authorities to the State. For purposes of funding corrective actions undertaken by a State pursuant to such delegated authorities, the Administrator may make such grants to the State from the Leaking Underground Storage Tank Trust Fund as the Administrator deems necessary to further the objectives of this subsection. Such grants shall be apportioned among the States applying for grants as follows:

"(A) 50 percent on the basis of the number of underground storage tanks containing petroleum which are located in each such State, and

"(B) 50 percent on the basis of the number of such tanks located in each such State from which there is a known release of petroleum.

Determinations under subparagraphs (A) and (B) shall be based on information provided by the States in the surveys required under subsection (h).

"(8) EMERGENCY PROCUREMENT POWERS.—Notwithstanding any other provision of law, the Administrator may authorize the use of such emergency procurement powers as he deems necessary to effect the purpose of this subsection. The Administrator shall promulgate regulations prescribing the circumstances under which such authority shall be used and any procedures governing the use of such authority which the Administrator deems necessary.

"(9) DEFINITION OF OWNER.—As used in this subsection, the term 'owner' does not include any person who, without participating in the management of an underground storage tank, holds indicia of ownership primarily to protect his security interest in the tank.".

(d) METHODS OF FINANCIAL RESPONSIBILITY.—The first sentence of section 9003(d)(2) of the Solid Waste Disposal Act is amended by striking out "or" after "credit," and by striking out the period at the end thereof and inserting in lieu thereof the following: "or any other method satisfactory to the Administrator.".

(e) POLLUTION LIABILITY INSURANCE.—

(1) STUDY.—The Comptroller General shall conduct a study of the availability of pollution liability insurance, leak insurance, and contamination insurance for owners and operators of petroleum storage and distribution facilities. The study shall assess the current and projected extent to which private insurance can contribute to the financial responsibility of owners and operators of underground storage tanks and the ability of owners and operators of underground storage tanks to maintain financial responsibility through other methods. The study shall consider to what extent, if any, the placement of limitations on liability for corrective action costs by owners or operators of underground storage tanks will have on the availability of such insurance. The study shall consider the experience of owners or operators of marine vessels in getting insurance for their liabilities under the Federal Water Pollution Control Act and the operation of the Water Quality Insurance Syndicate.

(2) REPORT.—The Comptroller General shall report his findings under this subsection to the Committees on Energy and Commerce and Public Works

and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate within nine months after the date of the enactment of this subsection. Such report shall include recommendations for legislative or administrative changes that will enable owners and operators of underground storage tanks to maintain financial responsibility sufficient to provide for all clean-up costs and damages that may result from reasonably foreseeable releases and events.

SEC. 206. CITIZENS SUITS.

Title III of CERCLA is amended by adding the following new section after section 309:

"SEC. 310. CITIZENS SUITS.

"(a) AUTHORITY TO BRING CIVIL ACTIONS.—Except as provided in subsections (d) and (e) of this section, any person may commence a civil action on his own behalf—

"(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who—

"(A) is alleged to be in violation of any requirement which has become effective pursuant to this Act; or

"(B) has contributed or is contributing to the release or threatened release of any hazardous substance from a hazardous waste disposal site, if such release or threatened release may present an imminent and substantial endangerment to public health or the environment; or

"(2) against—

"(A) the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator; or

"(B) any other department, agency, or instrumentality of the United States where there is alleged a failure of such department, agency, or instrumentality to perform any act or duty under section 120 of this Act (relating to Federal facilities) which is not discretionary with such department, agency, or instrumentality.

For purposes of this subsection, the term 'hazardous waste disposal site' means a site at which disposal of hazardous waste has occurred or is occurring.

"(b) VENUE.—

"(1) ACTIONS UNDER SUBSECTION (a)(1).—Any action under subsection (a)(1)(A) shall be brought in the district court for the district in which the alleged violation occurred. Any action under subsection (a)(1)(B) shall be brought in the district court for the district in which the release or threatened release occurred.

"(2) ACTIONS UNDER SUBSECTION (a)(2).—Any action brought under paragraph (2) of subsection (a) may be brought in the United States District Court for the District of Columbia.

"(c) RELIEF.—The district court shall have jurisdiction in actions brought under subsection (a)(1)(A) to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a)(1)(B), to immediately restrain any person contributing to the endangerment referred to in subsection (a)(1)(B), to order such person to take response action as provided for under this Act, or both. The district court shall have jurisdiction in actions brought under subsection (a)(2) to order the Administrator or other department, agency, or instrumentality to perform the act or duty concerned.

"(d) SUBSECTION (a)(1) ACTIONS.—

"(1) NOTICE.—No action may be commenced under subsection (a)(1) of this section prior to 60 days after the plaintiff has given notice of the violation or release or threatened release—

"(A) to the Administrator;

"(B) to the State in which the alleged violation or release or threatened release occurs; and

"(C) to any alleged violator or person who contributed or is contributing to the release or threatened release.

Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation..

"(2) ACTIONS UNDER PARAGRAPH (1).—No action may be commenced under subsection (a)(1) if the Administrator—

"(A) has commenced and is diligently—

"(i) pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of such requirement,

"(ii) pursuing an administrative order or civil action to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment, or

"(iii) prosecuting an action in court under section 106 of this Act, or under section 7003 of the Solid Waste Disposal Act, with respect to such violation or endangerment;

"(B) is actually engaging in a removal action under section 104 with respect to such violation or endangerment;

"(C) is diligently proceeding with a remedial investigation and feasibility study under section 104(b) of this Act or has completed a remedial investigation and feasibility study and is diligently proceeding with a response action with respect to such violation or endangerment; or

"(D) has obtained a court order (including a consent decree) under section 106 of this Act or under section 7003 of the Solid Waste Disposal Act under which any responsible party—

"(i) is diligently conducting a removal action,

"(ii) is diligently proceeding with a remedial investigation and feasibility study, or

"(iii) has completed a remedial investigation and feasibility study and is diligently proceeding with a response action,

with respect to such violation or endangerment.

In the case of an administrative order referred to in subparagraph (A), actions under subsection (a)(1)(B) are prohibited only as to the scope and duration of such administrative order.

"(3) Actions under subsection (a)(1)(B); state activity.—No action may be commenced by any person other than the State under subsection (a)(1)(B) if, in order to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment, the State—

"(A) has commenced and is diligently prosecuting an action under subsection (a)(1)(B) with respect to such endangerment;

"(B) is actually engaging in a removal action under section 104 with respect to such endangerment; or

"(C) has incurred costs to initiate a remedial investigation and feasibility study under section 104(b) of this Act and is diligently proceeding with a remedial action under this Act.

"(4) Standing.—For purposes of this section, only a person who has an interest which is or may be adversely affected may bring an action under subsection (a)(1)(B).

"(e) Subsection (a)(2) Actions.—No action may be commenced under paragraph (2) of subsection (a) prior to the

60th day following the date on which the plaintiff gives notice to the Administrator or other department, agency, or instrumentality that the plaintiff will commence such action. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

"(f) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

"(g) OTHER RIGHTS.—Nothing in this Act shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any standard or requirement relating to hazardous substances or to seek any other relief (including relief against the Administrator or a State agency).

"(h) INTERVENTION.—

"(1) BY THE UNITED STATES.—In any action under this section the United States, if not a party, may intervene as a matter of right.

"(2) BY PERSONS.—In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the Administrator or the State shows that the person's interest is adequately represented by existing parties in the action.

"(i) FEDERALLY PERMITTED RELEASE.—It shall be a defense in an action under subsection (a)(1)(B) if the defendant establishes that the release referred to in subsection (a)(1)(B) was a federally permitted release. For purposes of this subsection, the term 'federally permitted release' has the meaning given such term by section 101(10), except that such term shall not include discharges from a point source which are identified in a permit application (but not in a permit) under section 402 of the Federal Water Pollution Control Act.

"(j) PESTICIDES.—No action may be brought under this section with respect to any release or threatened release resulting from the normal application of a pesticide product registered under, or whose application is otherwise authorized under, the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this subsection shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law (including common law)—

"(1) for damages, injury, or loss resulting from a release of any hazardous substance,

"(2) for removal or remedial action, or

"(3) for the costs of removal or remedial action for such hazardous substance.

"(k) DEFINITIONS.—The terms used in this section shall have the same meanings as when used in title I.".

SEC. 207. INDIAN TRIBES.

(a) IN GENERAL.—Title I of CERCLA is amended by adding the following new section after section 206:

"SEC. 207. INDIAN TRIBES.

"(a) DEFINITION.—As used in this Act, the term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The term does not include any Alaska Native regional or village corporation.

"(b) FUTURE MAINTENANCE AND COST-SHARING REQUIREMENTS.—The requirements of section 104(c)(3) of this Act for assurances regarding future maintenance and cost-sharing shall not apply to remedial action to be taken on any of the following:

"(1) Land or water held by an Indian tribe.

"(2) Land or water held by the United States in trust for Indians.

"(3) Land or water held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation).

"(4) Land or water within the borders of an Indian reservation.

In the case of remedial action to be taken on any such land or water, the Secretary of the Interior shall provide the assurance required by section 104(c)(3) regarding the availability of a hazardous waste disposal facility.

"(c) CONTRACTS OR COOPERATIVE AGREEMENTS.—

"(1) AUTHORITY.—If the Administrator determines that an Indian tribe has the capability to carry out any or all of the actions authorized in this section, the Administrator may, in his discretion, enter into a contract or cooperative agreement with such an Indian tribe to take such actions in accordance with criteria and priorities established pursuant to section 105(a)(8) and to be reimbursed for the reasonable response costs thereof from the Fund.

"(2) ENFORCEMENT.—If the Administrator enters into a contract or cooperative agreement pursuant to this subsection, and the Indian tribe thereof fails to comply with any requirements of the contract, the Administrator may, after providing 60 days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the Indian tribe.

"(d) NATURAL RESOURCES LIABILITY.—

"(1) LIABILITY TO TRIBE.—Liability under section 107(a)(4)(C) shall be to the Indian tribe in the case of an injury to, destruction of, or loss of natural resources belonging to, managed by, controlled by, or appertaining to the tribe, or held in trust for the benefit of the tribe, or belonging to a member of the tribe if such resources are subject to a trust restriction on alienation.

"(2) EXEMPTIONS.—No liability to an Indian tribe shall be imposed under section 107(a)(4)(C), where the party sought to be charged has demonstrated each of the following:

"(A) The damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement or other comparable environmental analysis.

"(B) A decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license. In the case of damages occurring pursuant to a Federal permit or license, this subparagraph applies only so long as the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe.

"(3) RECOVERY.—The Secretary of the Interior, or the authorized representative of any Indian tribe, shall act on behalf of the public as trustee of natural resources described in paragraph (1) to recover for damages described in paragraph (2). Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Indian tribe, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources. There shall be no recovery under the authority of section 107(a)(4)(C) where the damages complained of and the release of a hazardous substance from which such damages resulted have occurred wholly before the date of the enactment of this Act.

"(e) DELEGATION.—The Administrator is authorized to delegate authority to obligate money in the Fund or to settle claims to officials of an Indian tribe operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d).

"(f) APPLICATION OF OTHER PROVISIONS.—The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 116 (regarding health assessments and protection), and section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the National Priorities List).".

(b) CONFORMING AMENDMENTS.—(1) Section 101(a)(16) of CERCLA is amended by striking out "or" the last place it appears and by inserting before the semicolon at the end thereof the following: ", any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe".

(2) Section 107 of CERCLA is amended—

(A) in subsection (a), by inserting "or an Indian tribe" after "State";

(B) in subsection (i), by inserting "or Indian tribe" after "State" the first place it appears; and

(C) in subsection (j), by inserting "or Indian tribe" after "State" the first place it appears.

SEC. 208. COMMENCEMENT OF DRILLING FLUIDS, ETC. STUDY.

The Administrator shall commence the study required under section 8002(m) of the Solid Waste Disposal Act not later than six months after the date of the enactment of this Act.

SEC. 209. INSURABILITY STUDY.

Section 301 of CERCLA is amended by adding at the end thereof the following new subsection:

"(g) Insurability Study.—

"(1) Study group.—The Comptroller General of the United States shall appoint a study group to carry out a study under this subsection. The study group shall be comprised of the following:

"(A) 1 representative of the Comptroller General and 2 representatives of the Administrator.

"(B) 4 representatives of persons described in paragraph (2).

"(C) 2 representatives of groups or organizations comprised generally of persons adversely affected by releases or threatened releases of hazardous substances.

"(D) 3 representatives of property and casualty insurers.

"(E) 1 representative of reinsurers.

The representative of the Comptroller General shall be the chairperson of the study group. One reporter shall be elected from among the members of the study group.

"(2) STUDY.—The study group shall undertake a study to determine the insurability of the liability of the following:

"(A) Persons who generate hazardous substances: liability for costs under this Act.

"(B) Persons who own or operate facilities: liability for costs under this Act.

"(C) Persons liable for harm to persons or property caused by the release of hazardous substances into the environment.

"(3) ITEM EVALUATED.—As part of their study in accordance with this section, the study group shall evaluate, among other matters, the following:

"(A) Current economic conditions in, and the future outlook for, the commercial market for insurance and reinsurance.

"(B) Current trends in statutory and common law remedies.

"(C) The impact of possible changes in traditional standards of liability, proof, evidence, and damages on existing statutory and common law remedies.

"(D) The effect of the standard of liability and extent of persons upon whom it is imposed under this Act on the underwriting and pricing of insurance coverage.

"(E) Current trends in judicial interpretation and construction of applicable insurance contracts.

"(F) The frequency and severity of a representative sample of claims closed during the calendar year preceding the date of the enactment of this subsection.

"(G) Other impediments to insurability.

"(4) SUBMISSION.—A report on the results of the study shall be submitted to Congress with appropriate recommendations within 18 months after the date of the enactment of this subsection.".

SEC. 210. POLLUTION LIABILITY INSURANCE.

CERCLA is amended by adding the following new title at the end thereof:

"TITLE IV—POLLUTION INSURANCE

"SEC. 401. DEFINITIONS.

"As used in this title—

"(1) INSURANCE.—The term 'insurance' means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law.

"(2) POLLUTION LIABILITY.—The term 'pollution liability' means liability for injuries arising from the release of hazardous substances or pollutants or contaminants.

"(3) RISK RETENTION GROUP.—The term 'risk retention group' means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State—

"(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

"(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

"(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State; and

"(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

"(4) PURCHASING GROUP.—The term 'purchasing group' means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

"(5) STATE.—The term 'State' means any State of the United States and the District of Columbia.

"SEC. 402. STATE LAWS.

"Nothing in this title shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. The definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this title, including recognition or qualification of risk retention groups or purchasing groups.

"SEC. 403. RISK RETENTION GROUPS.

"(a) EXEMPTION.—Except as provided in this section, a risk retention group shall be exempt from the following:

"(1) A State law, rule, or order which makes unlawful, or regulates, directly or indirectly, the operation of a risk retention group.

"(2) A State law, rule, or order which requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong.

"(3) A State law, rule, or order which requires any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in the State.

"(4) A State law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

"(b) EXCEPTIONS.—

"(1) STATE LAWS GENERALLY APPLICABLE.—Nothing in subsection (a) shall be construed to affect the applicability of State laws generally applicable to persons or corporations. The State in which a risk retention group is chartered may regulate the formation and operation of the group.

"(2) STATE REGULATIONS NOT SUBJECT TO EXEMPTION.—Subsection (a) shall not apply to any State law which requires a risk retention group to do any of the following:

"(A) Comply with the unfair claim settlement practices law of the State.

"(B) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State.

"(C) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism.

"(D) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses.

"(E) Register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process.

"(F) Furnish, upon request, such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction.

"(G) Submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

"(i) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

"(ii) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group.

"(H) Comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (G).

"(c) APPLICATION OF EXEMPTIONS.—The exemptions specified in subsection (a) apply to—

"(1) pollution liability insurance coverage provided by a risk retention group for—

"(A) such group; or

"(B) any person who is a member of such group;

"(2) the sale of pollution liability insurance coverage for a risk retention group; and

"(3) the provision of insurance related services or management services for a risk retention group or any member of such a group.

"(d) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

"SEC. 404. PURCHASING GROUPS.

"(a) EXEMPTION.—Except as provided in this section, a purchasing group is exempt from the following:

"(1) A State law, rule, or order which prohibits the establishment of a purchasing group.

"(2) A State law, rule, or order which makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters.

"(3) A State law, rule, or order which prohibits a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection.

"(4) A State law, rule, or order which prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

"(5) A State law, rule, or order which requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form.

"(6) A State law, rule, or order which requires that a certain percentage of a purchasing group must obtain insurance on a group basis.

"(7) A State law, rule, or order which requires that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State.

"(8) A State law, rule, or order which otherwise discriminate against a purchasing group or any of its members.

"(b) APPLICATION OF EXEMPTIONS.—The exemptions specified in subsection (a) apply to the following:

"(1) Pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to—

"(A) a purchasing group; or

"(B) any person who is a member of a purchasing group.

"(2) The sale of any one of the following to a purchasing group or a member of the group:

"(A) Pollution liability insurance and comprehensive general liability coverage.

"(B) Insurance related services.

"(C) Management services.

"(c) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

"SEC. 405. APPLICABILITY OF SECURITIES LAWS.

"(a) OWNERSHIP INTERESTS.—The ownership interests of members of a risk retention group shall be considered to be—

"(1) exempted securities for purposes of section 5 of the Securities Act of 1933 and for purposes of section 12 of the Securities Exchange Act of 1934; and

"(2) securities for purposes of the provisions of section 17 of the Securities Act of 1933 and the provisions of section 10 of the Securities Exchange Act of 1934.

"(b) INVESTMENT COMPANY ACT.—A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

"(c) BLUE SKY LAW.—The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.".

SEC. 211. RELEASES ASSOCIATED WITH BRINE DISPOSAL.

Title I of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 130. RELEASES ASSOCIATED WITH BRINE DISPOSAL.

"(a) REVIEW.—The Administrator shall conduct a review of State programs to protect public health and the environment in States in which annular injection of brines associated with oil and gas production is permitted. The review shall only be conducted in the case of States in which there are more than 2500 active wells at which annular injection is used as of the date of enactment of this section.

"(b) ENFORCEMENT.—

"(1) DETERMINATION.—If the Administrator determines, on the basis of the review conducted under subsection (a), that any State subject to such review is not adequately enforcing a State program to assure that human health or the environment will not be endangered by releases into the environment associated with the annular injection or surface disposal of such brines, the Administrator shall after notice to the State take or order such enforcement or corrective action in such State as may be necessary to assure protection of human health or the environment from endangerment by releases into the environment associated with such injection or other disposal practices.

"(2) CIVIL ACTION.—The Administrator may bring a civil action under this paragraph in the appropriate United States district court to require compliance with any enforcement or corrective action taken or ordered under paragraph (1) in any State referred to in subsection (a). The court may enter such judgment as protection of human health or the environment may require, including the imposition of a civil penalty not to exceed $5,000 for each day of violation of any enforcement or corrective action taken or ordered by the Administrator.

"(c) DEADLINES.—The review required under subsection (a) shall be completed, and any enforcement or corrective action taken or ordered under subsection (b) commenced, no later than 18 months after the date of the enactment of this section.

"(d) DEFINITION.—For purposes of this section, the term 'annular injection' means the reinjection of brines associated with the production of oil or gas between the production and surface casings of a conventional oil or gas producing well."

SEC. 212. RESEARCH, DEVELOPMENT, AND DEMONSTRATION.

(a) PURPOSE.—The purposes of this section are as follows:

(1) To establish a comprehensive and coordinated Federal program of research, development, demonstration, and training for the purpose of promoting the development of alternative and innovative treatment technologies that can be used in response actions under the Superfund program, to provide incentives for the development and use of such technologies, and to improve the scientific capability to assess, detect and evaluate the effects on and risks to human health from hazardous substances.

(2) To establish a basic university research and education program within the Department of Health

and Human Services and a research, demonstration, and training program within the Environmental Protection Agency.

(3) To reserve certain funds from the Hazardous Substance Trust Fund to support a basic research program within the Department of Health and Human Services, and an applied and developmental research program within the Environmental Protection Agency.

(4) To enhance the Environmental Protection Agency's internal research capabilities related to Superfund activities, including site assessment and technology evaluation.

(5) To provide incentives for the development of alternative and innovative treatment technologies in a manner that supplements, but does not compete with or duplicate, private sector development of such technologies.

(b) AMENDMENT OF CERCLA.—Title III of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 311. RESEARCH, DEVELOPMENT, AND DEMONSTRATION.

"(a) HAZARDOUS SUBSTANCE RESEARCH AND TRAINING.—

"(1) AUTHORITIES OF SECRETARY.—The Secretary of Health and Human Services (hereinafter in this subsection referred to as the Secretary), in consultation with the Administrator, may conduct and support the following activities (through grants, cooperative agreements, and contracts):

"(A) Basic research (including epidemiologic and ecologic studies) in the following:

"(i) Advanced techniques for the detection, assessment, and evaluation of the effects on human health of hazardous substances.

"(ii) Methods to assess the risks to human health presented by hazardous substances.

"(iii) Methods and technologies to detect hazardous substances in the environment and basic biological, chemical, and physical methods to reduce the amount and toxicity of hazardous substances.

"(B) Training, including each of the following:

"(i) Short courses and continuing education for State and local health and environmental agency personnel and others involved in hazardous waste management and control or in the evaluation of the risks to human health presented by hazardous substances.

"(ii) Graduate or advanced training in environmental and occupational health and safety and in the public health and engineering aspects of hazardous waste control.

"(iii) Graduate training in the geosciences, including hydrogeology, geological engineering, geophysics, geochemistry, and related fields necessary to meet professional personnel needs in the public and private sectors and to effectuate the purposes of this Act.

"(2) DIRECTOR OF NIEHS.—The Director of the National Institute for Environmental Health Sciences shall cooperate fully with those agencies specified in subparagraphs (A) through (H) of paragraph (5) in carrying out the purposes of this section.

"(3) RECIPIENTS OF GRANTS, ETC.—A grant, cooperative agreement, or contract may be made or entered into under paragraph (1) with an accredited institution of higher education. The institution may carry out the research or training under the grant, cooperative agreement, or contract through contracts, including contracts with any of the following:

"(A) Generators of hazardous wastes.

"(B) Persons involved in the detection, assessment, evaluation, and treatment of hazardous substances.

"(C) Owners and operators of facilities at which hazardous substances are located.

"(D) State and local governments.

"(4) PROCEDURES.—In making grants and entering into cooperative agreements and contracts under this subsection, the Secretary shall act through the Director of the National Institute for Environmental Health Sciences. In considering the allocation of funds for training purposes, the Director shall ensure that at least one grant, cooperative agreement, or contract shall be awarded for training described in each of clauses (i), (ii), and (iii) of paragraph (1)(B). Where applicable, the Director may choose to operate training activities in cooperation with the Director of the National Institute for Occupational Safety and Health. The procedures applicable to grants and contracts under title IV of the Public Health Service Act shall be followed under this subsection.

"(5) ADVISORY COUNCIL.—To assist in the implementation of this subsection and to aid in the coordination of research and demonstration and training activities funded from the Fund under this section, the Secretary shall appoint an advisory council (hereinafter in this subsection referred to as the 'Advisory Council') which shall consist of the following:

"(A) The Assistant Administrator of the Environmental Protection Agency for Research and Development who shall serve as chairman.

"(B) The Assistant Administrator of the Environmental Protection Agency for Solid Waste and Emergency Response.

"(C) The Director for the Center for Environmental Health in the Centers for Disease Control.

"(D) The Director of the National Institute for Occupational Safety and Health.

"(E) The Director of the National Cancer Institute.

"(F) The Administrator of ATSDR.

"(G) The Director of the National Center for Toxicologic Research of the Food and Drug Administration.

"(H) The Director of Environmental Policy within the Office of the Secretary of Defense.

"(I) A representative of the toxic chemical waste producing industry.

"(J) A representative of entities engaged in the management of toxic chemical wastes.

"(K) Three representatives of institutions of higher education (one from the field of medicine with expertise in occupational health and safety, one from the field of chemical engineering with expertise in hazardous waste engineering, and one from the field of biological sciences with expertise in environmental science).

"(L) Two representatives from State and local health or environmental agencies.

"(M) One representative from community-based organizations concerned with hazardous substances.

"(N) One representative with scientific expertise from a national environmental organization concerned with hazardous substances.

"(6) PLANNING.—Within six months after the date of the enactment of this subsection, the Secretary, acting through the Director of the National Institute for Environmental Health Sciences, shall issue a plan for the implementation of paragraph (1). The plan shall include priorities for actions under paragraph (1) and include research and training relevant to scientific and technological issues resulting from site specific hazardous substance response experience. The Secretary shall, to the maximum extent practicable, take appropriate steps to coordinate program activities under this plan with the activities of other Federal agencies in order to avoid duplication of effort. The plan shall be consistent with the need for the development of new technologies for meeting the goals of response actions in accordance with the provisions of this Act. The Advisory Council shall be provided an opportunity to review and comment on the plan and priorities and assist appropriate coordination among those agencies specified in subparagraphs (A) through (H) of paragraph (5).

"(b) ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGY RESEARCH AND DEMONSTRATION PROGRAM.—

"(1) ESTABLISHMENT.—The Administrator is authorized and directed to carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative treatment technologies (hereinafter in this subsection referred to as the 'program') which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment.

"(2) OFFICE OF TECHNOLOGY DEMONSTRATION.—The program shall be administered by the Administrator, acting through an office of technology demonstration established under this subsection and shall be coordinated with programs carried out by the Office of Solid Waste and Emergency Response and the Office of Research and Development. The Administrator shall establish such Office of Technology Demonstration within four months after the date of the enactment of this section. Such office shall be headed by a Director.

"(3) CONTRACTS AND GRANTS.—In carrying out the program, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, persons, public entities, and nonprofit private entities which are exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1954. The Administrator shall, to the maximum extent possible, enter into appropriate cost sharing arrangements under this subsection.

"(4) USE OF SITES.—In carrying out the program, the Administrator may arrange for the use of sites at which a response may be undertaken under section 104 for the purposes of carrying out research, testing, evaluation, development, and demonstrationprojects. Each such project shall be carried out under such terms and conditions as the Administrator shall require to assure the protection of human health and the environment and to assure adequate control by the Administrator of the research, testing, evaluation, development, and demonstration activities at the site.

"(5) DEMONSTRATION ASSISTANCE.—

"(A) PROGRAM COMPONENTS.—The demonstration assistance program shall include the following:

"(i) The publication of a solicitation and the evaluation of applications for demonstration projects utilizing alternative or innovative technologies.

"(ii) The selection of sites which are suitable for the testing and evaluation of innovative technologies.

"(iii) The development of detailed plans for innovative technology demonstration projects.

"(iv) The supervision of such demonstration projects and the providing of quality assurance for data obtained.

"(v) The evaluation of the results of alternative innovative technology demonstration projects and the determination of whether or not the technologies used are effective and feasible.

"(B) SOLICITATION.—Within 90 days after the date of the enactment of this section, and no less often than once every 12 months thereafter, the Administrator shall publish a solicitation for innovative or alternative technologies at a stage of development suitable for full-scale demonstrations at sites at which a response action may be undertaken under section 104. The purpose of any such project shall be to demonstrate the use of an alternative or innovative treatment technology with respect to hazardous substances or pollutants or contaminants which are located at the site or which are to be removed from the site. The solicitation notice shall prescribe information to be included in the application, including technical and economic data derived from the applicant's own research and development efforts, and other information sufficient to permit the Administrator to assess the technology's potential and the types of remedial action to which it may be applicable.

"(C) APPLICATIONS.—Any person and any public or private nonprofit entity may submit an application to the Administrator in response to the solicitation. The application shall contain a proposed demonstration plan setting forth how and when the project is to be carried out and such other information as the Administrator may require.

"(D) PROJECT SELECTION.—In selecting technologies to be demonstrated, the Administrator shall fully review the applications submitted and shall consider at least the criteria specified in paragraph (7). The Administrator shall select or refuse to select a project for demonstration under this subsection within 90 days of receiving the completed application for such project. In the case of a refusal to select the project, the Administrator shall notify the applicant within such 90-day period of the reasons for his refusal.

"(E) SITE SELECTION.—The Administrator shall propose one or more sites at which a response may be undertaken under seciton 104 to be the location of any demonstration project under this subsection within 60 days after the close of the public comment period. After an opportunity for notice and public comment, the Administrator shall select such sites and projects. In selecting such site, the Administrator shall take into account the applicant's technical data and preferences either for onsite operation or for utilizing the site as a source of hazardous substances or pollutants or contaminants to be treated offsite.

"(F) DEMONSTRATION PLAN.—Within 60 days after the selection of the site under this paragraph to be the location of a demonstration project, the Administrator shall establish a final demonstration plan for the project, based upon the demonstration plan contained in the application for the project. Such plan shall clearly set forth how and when the demonstration project will be carried out.

"(G) SUPERVISION AND TESTING.—Each demonstration project under this subsection shall be performed by the applicant, or by a person satisfactory to the applicant, under the supervision of the Administrator. The Administrator shall enter into a written agreement with each applicant granting the Administrator the responsibility and authority for testing procedures, quality control, monitoring, and other measurements necessary to determine and evaluate the results of the demonstration project. The Administrator may pay the costs of testing, monitoring, quality control, and other measurements required by the Administrator to determine and evaluate the results of the demonstration project, and the limitations established by subparagraph (J) shall not apply to such costs.

"(H) PROJECT COMPLETION.—Each demonstration project under this subsection shall be completed within such time as is established in the demonstration plan.

"(I) EXTENSIONS.—The Administrator may extend any deadline established under this paragraph by mutual agreement with the applicant concerned.

"(J) FUNDING RESTRICTIONS.—The Administrator shall not provide any Federal assistance for any part of a full-scale field demonstration project under this subsection to any applicant unless such applicant can demonstrate that it cannot obtain appropriate private financing on reasonable terms and conditions sufficient to carry out such demonstration project without such Federal assistance. The total Federal funds for any full-scale field demonstration project under this subsection shall not exceed 50 percent of the total cost of such project estimated at the time of the award of such assistance. The Administrator shall not expend more than $10,000,000 for assistance under the program in any fiscal year and shall not expend more than $3,000,000 for any single project.

"(6) FIELD DEMONSTRATIONS.—In carrying out the program, the Administrator shall initiate or cause to be initiated at least 10 field demonstration projects of alternative or innovative treatment technologies at sites at which a response may be undertaken under section 104, in fiscal year 1987 and each of the succeeding three fiscal years. If the Administrator determines that 10 field demonstration projects under this subsection cannot be initiated consistent with the criteria set forth in paragraph (7) in any of such fiscal years, the Administrator shall transmit to the appropriate committees of Congress a report explaining the reasons for his inability to conduct such demonstration projects.

"(7) CRITERIA.—In selecting technologies to be demonstrated under this subsection, the Administrator shall, consistent with the protection of human health and the environment, consider each of the following criteria:

"(A) The potential for contributing to solutions to those waste problems which pose the greatest threat to human health, which cannot be adequately controlled under present technologies, or which otherwise pose significant management difficulties.

"(B) The availability of technologies which have been sufficiently developed for field demonstration and which are likely to be cost-effective and reliable.

"(C) The availability and suitability of sites for demonstrating such technologies, taking into account the physical, biological, chemical, and geological characteristics of the sites, the extent and type of contamination found at the site, and the capability to conduct demonstration projects in such a manner as to assure the protection of human health and the environment.

"(D) The likelihood that the data to be generated from the demonstration project at the site will be applicable to other sites.

"(8) TECHNOLOGY TRANSFER.—In carrying out the program, the Administrator shall conduct a technology transfer program including the development, collection, evaluation, coordination and dissemination of information relating to the utilization of alternative or innovative treatment technologies for remedial actions. The Administrator shall establish and maintain a central reference library for such information. The information maintained by the Administrator shall be made available to the public, subject to the provisions of section 552 of title 5 of the United States Code and section 1905 of title 18 of the United States Code, and to other Government agencies in a manner that will facilitate its dissemination; except, that upon a showing satisfactory to the Administrator by any person that any information, or portion of this subsection by the Administrator directly or indirectly from such person, would, if made public, divulge—

"(A) trade secrets; or

"(B) other proprietary information of such person,

the Administrator shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18 of the United States Code. This subsection is not authority to withhold information from Congress or any committee of Congress upon the request of the chairman of such committee.

"(9) Training.—The Administrator is authorized and directed to carry out, through the Office of Technology Demonstration, a program of training and an evaluation of training needs for each of the following:

"(A) Training in the procedures for the handling and removal of hazardous substances for employees who handle hazardous substances.

"(B) Training in the management of facilities at which hazardous substances are located and in the evaluation of the hazards to human health presented by such facilities for State and local health and environment agency personnel.

"(10) DEFINITION.—For purposes of this subsection, the term 'alternative or innovative treatment technologies' means those technologies which permanently alter the composition of hazardous waste through chemical, biological, or physical means so as to significantly reduce the toxicity, mobility, or volume (or any combination thereof) of the hazardous waste or contaminated materials being treated. The term also includes technologies that characterize or assess the extent of contamination, the chemical and physical character of the contaminants, and the stresses imposed by the contaminants on complex ecosystems at sites. The term also includes proprietary or patented methods.

"(c) HAZARDOUS WASTE RESEARCH.—The Administrator may conduct and support, through grants, cooperative agreements, and contracts, research with respect to the detection, assessment, and evaluation of the effects on and risks to human health of hazardous substances and detection of hazardous substances in the environment. The Administrator shall coordinate such research with the Secretary of Health and Human Services, acting through the advisory council established under this section, in order to avoid duplication of effort.

"(d) UNIVERSITY HAZARDOUS SUBSTANCE RESEARCH CENTERS.—

"(1) GRANT PROGRAM.—The Administrator shall make grants to institutions of higher learning to establish and operate not less than five hazardous substance research centers in the United States. In carrying out the program under this subsection, the Administrator should seek to have established and operated ten hazardous substance research centers in the United States.

"(2) RESPONSIBILITIES OF CENTERS.—The responsibilities of each hazardous substance research center established under this subsection shall include, but not be limited to, the conduct of research and training relating to the manufacture, use, transportation, disposal, and management of hazardous substances and publication and dissemination of the results of such research.

"(3) Applications.—Any institution of higher learning interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

"(4) Selection criteria.—The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

"(A) The hazardous substance research center shall be located in a State which is representative of the needs of the region in which such State is located for improved hazardous waste management.

"(B) The grant recipient shall be located in an area which has experienced problems with hazardous substance management.

"(C) There is available to the grant recipient for carrying out this subsection demonstrated research resources.

"(D) The capability of the grant recipient to provide leadership in making national and regional contributions to the solution of both long-range and immediate hazardous substance management problems.

"(E) The grant recipient shall make a commitment to support ongoing hazardous substance research programs with budgeted institutional funds of at least $100,000 per year.

"(F) The grant recipient shall have an interdisciplinary staff with demonstrated expertise in hazardous substance management and research.

"(G) The grant recipient shall have a demonstrated ability to disseminate results of hazardous substance research and educational programs through an interdisciplinary continuing education program.

"(H) The projects which the grant recipient proposes to carry out under the grant are necessary and appropriate.

"(5) MAINTENANCE OF EFFORT.—No grant may be made under this subsection in any fiscal year unless the recipient of such grant enters into such agreements with the Administrator as the Administrator may require to ensure that such recipient will maintain its aggregate expenditures from all other sources for establishing and operating a regional hazardous substance research center and related research activities at or above the average level of such expenditures in its two fiscal years preceding the date of the enactment of this subsection.

"(6) FEDERAL SHARE.—The Federal share of a grant under this subsection shall not exceed 80 percent of the costs of establishing and operating the regional hazardous substance research center and related research activities carried out by the grant recipient.

"(7) LIMITATION ON USE OF FUNDS.—No funds made available to carry out this subsection shall be used for acquisition of real property (including buildings) or construction of any building.

"(8) ADMINISTRATION THROUGH THE OFFICE OF THE ADMINISTRATOR.—Administrative responsibility for carrying out this subsection shall be in the Office of the Administrator.

"(9) EQUITABLE DISTRIBUTION OF FUNDS.—The Administrator shall allocate funds made available to carry out this subsection equitably among the regions of the United States.

"(10) TECHNOLOGY TRANSFER ACTIVITIES.—Not less than five percent of the funds made available to carry out this subsection for any fiscal year shall be available to carry out technology transfer activities.

"(e) REPORT TO CONGRESS.—At the time of the submission of the annual budget request to Congress, the Administrator shall submit to the appropriate committees of the House of Representatives and the Senate and to the advisory council established under subsection (a), a report on the progress of the research, development, and demonstration program authorized by subsection (b), including an evaluation of each demonstration project completed in the preceding fiscal year, findings with respect to the efficacy of such demonstrated technologies in achieving permanent and significant reductions in risk from hazardous wastes, the costs of such demonstration projects, and the potential applicability of, and projected costs for, such technologies at other hazardous substance sites.

"(f) SAVING PROVISION.—Nothing in this section shall be construed to affect the provisions of the Solid Waste Disposal Act.

"(g) SMALL BUSINESS PARTICIPATION.—The Administrator shall ensure, to the maximum extent practicable, an adequate opportunity for small business participation in the program established by subsection (b).

"(h) BUDGET AUTHORITY FOR CONTRACTS.—Any new spending authority described in subsection (c)(2)(A) of section 401 of the Congressional Budget Act of 1974 which is provided under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.".

(c) TESTING PROCEDURES AND STANDARDS.—The Administrator shall revise and republish the National Contingency Plan required by section 105 of CERCLA. The revisions shall include standards and testing procedures by which alternative or innovative treatment technologies can be determined to be appropriate for use in response actions under title I of CERCLA. The revision shall be made within one year after the date of enactment of this Act and after notice and opportunity for public comment.

SEC. 213. DEPARTMENT OF DEFENSE ENVIRONMENTAL RESTORATION PROGRAM.

(a) IN GENERAL.—(1) Title 10, United States Code, is amended—

(A) by redesignating section 2701 as section 2721; and

(B) by inserting after chapter 159 the following new chapter:

"CHAPTER 160—ENVIRONMENTAL RESTORATION

"Sec.
"2701. Environmental restoration program.
"2702. Research, development, and demonstration program.
"2703. Environmental restoration transfer account.
"2704. Commonly found unregulated hazardous substances.
"2705. Notice of environmental restoration activities.
"2706. Annual report to Congress.
"2707. Definitions.

"§ 2701. Environmental restoration program

"(a) ENVIRONMENTAL RESTORATION PROGRAM.—

"(1) IN GENERAL.—The Secretary of Defense shall carry out a program of environmental restoration at facilities under the jurisdiction of the Secretary. The program shall be known as the 'Defense Environmental Restoration Program'.

"(2) APPLICATION OF SECTION 120 OF CERCLA.—Activities of the program described in subsection (b)(1) shall be carried out subject to section 120 (relating to Federal facilities) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this chapter referred to as 'CERCLA').

"(3) CONSULTATION WITH EPA.—The program shall be carried out in consultation with the Administrator of the Environmental Protection Agency.

"(4) ADMINISTRATIVE OFFICE WITHIN OSD.—The Secretary shall identify an office within the Office of the Secretary which shall have responsibility for carrying out the program.

"(b) PROGRAM PURPOSES.—The purposes of the program shall include the identification, investigation, and cleanup of hazardous substances, pollutants, and contaminants at sites under the jurisdiction of the Secretary through response and remedial actions covered by CERCLA.

"(c) RESPONSIBILITY FOR RESPONSE ACTIONS.—

"(1) BASIC RESPONSIBILITY.—The Secretary shall carry out (in accordance with the provisions of this chapter and CERCLA) all response actions with respect to releases of hazardous substances from each of the following:

"(A) Each facility or site owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary.

"(B) Each facility or site which was under the administrative jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances.

"(C) Each vessel of the Department of Defense, including vessels owned or bareboat chartered and operated.

"(2) OTHER RESPONSIBLE PARTIES.—Paragraph (1) shall not apply to a removal or remedial action if the Administrator has provided for response action by a potentially responsible person in accordance with section 122 of CERCLA.

"(3) STATE FEES AND CHARGES.—The Secretary shall pay fees and charges imposed by State authorities for permit services for the disposal of hazardous substances on lands which are under the jurisdiction of the Secretary to the same extent that nongovernmental entities are required to pay fees and charges imposed by State authorities for permit services. The preceding sentence shall not apply with respect to a payment that is the responsibility of a lessee, contractor, or other private person.

"(d) SERVICES OF OTHER AGENCIES.—The Secretary may enter into agreements on a reimbursable basis with any other Federal agency, and on a reimbursable or other basis with any State or local government agency, to obtain the services of that agency to assist the Secretary in carrying out any of the Secretary's responsibilities under this section. Services which may be obtained under this subsection include the identification, investigation, and cleanup of any off-site contamination possibly resulting from the release of a hazardous substance or waste at a facility under the Secretary's jurisdiction.

"(e) LIABILITY OF RESPONSE ACTION CONTRACTORS.—The provisions of section 119 of CERCLA apply to for response action contractors (as defined in that section) who carry out response actions under this section.

"§ 2702. Research, development, and demonstration program

"(a) PROGRAM.—As part of the Defense Environmental Restoration Program, the Secretary of Defense shall carry out a program of research, development, and demonstration with respect to hazardous wastes. The program shall be carried out in consultation and cooperation with the Administrator. The program shall include research, development, and demonstration with respect to each of the following:

"(1) Means of reducing the quantities of hazardous waste generated by activities and facilities under the jurisdiction of the Secretary.

"(2) Methods of treatment, disposal, and management (including recycling and detoxifying) of hazardous waste of the types and quantities generated by current and former activities of the Secretary and facilities currently and formerly under the jurisdiction of the Secretary.

"(3) Identifying more cost-effective technologies for cleanup of hazardous substances.

"(4) Toxicological data collection and methodology on risk of exposure to hazardous waste generated by the Department of Defense.

"(5) The testing, evaluation, and field demonstration of any innovative technology, processes, equipment, or related training devices which may contribute to establishment of new methods to control, contain, and treat hazardous substances, to be carried out in consultation and cooperation with, and to the extent possible in the same manner as, testing, evaluation, and field demonstration carried out by the Administrator, acting through the Office of Technology Demonstration of the Office of Emergency and Remedial Response of the Environmental Protection Agency.

"(b) SPECIAL PERMIT UNDER SECTION 3005(g) OF RCRA.—The Administrator may use the authorities of section 3005(g) of the Solid Waste Disposal Act to issue a permit for testing and evaluation which receives support under this section.

"(c) CONTRACTS AND GRANTS.—The Secretary may enter into contracts and cooperative agreements with, and make grants to, universities, public and private profit and nonprofit entities, and other persons to carry out the research, development, and demonstration authorized under this section. Such contracts may be entered into only to the extent that appropriated funds are available for that purpose.

"(d) INFORMATION COLLECTION AND DISSEMINATION.—

"(1) IN GENERAL.—The Secretary shall develop, collect, evaluate, and disseminate information related to the use (or potential use) of the treatment, disposal, and management technologies that are researched, developed, and demonstrated under this section.

"(2) ROLE OF EPA.—The functions of the Secretary under paragraph (1) shall be carried out in cooperation and consultation with the Administrator. To the extent appropriate and agreed upon by the Administrator and the Secretary, the Administrator shall evaluate and disseminate such information.

"§ 2703. Environmental restoration transfer account

"(a) ESTABLISHMENT OF TRANSFER ACCOUNT.—

"(1) ESTABLISHMENT.—There is hereby established in the Department of Defense an account to be known as the 'Defense Environmental Restoration Account' (hereinafter in this section referred to as the 'transfer account'). All sums appropriated to carry out the functions of the Secretary of Defense relating to environmental restoration under this chapter or any other Act shall be appropriated to the transfer account.

"(2) REQUIREMENT OF AUTHORIZATION OF APPROPRIATIONS.—No funds may be appropriated to the transfer account unless such sums have been specifically authorized by law.

"(3) AVAILABILITY OF FUNDS IN TRANSFER ACCOUNT.—Amounts appropriated to the transfer account shall remain available until transferred under subsection (b).

"(b) AUTHORITY TO TRANSFER TO OTHER DOD ACCOUNTS.—Amounts in the transfer account shall be available to be transferred by the Secretary to any appropriation account or fund of the Department for obligation from that account or fund. Funds so transferred shall be merged with and available for the same purposes and for the same period as the account or fund to which transferred.

"(c) OBLIGATION OF TRANSFERRED AMOUNTS.—Funds transferred under subsection (b) may only be obligated or expended from the account or fund to which transferred in order to carry out the functions of the Secretary under this Act or environmental restoration functions under any other Act.

"(d) BUDGET REPORTS.—In proposing the Budget for any fiscal year pursuant to section 1105 of title 31, the President shall set forth separately the amount requested for environmental restoration programs of the Department of Defense under this chapter or any other Act.

"(e) AMOUNTS RECOVERED UNDER CERCLA.—Amounts recovered under section 107 of CERCLA for response actions of the Secretary shall be credited to the transfer account.

"§ 2704. Commonly found unregulated hazardous substances

"(a) NOTICE TO HHS.—

"(1) IN GENERAL.—The Secretary of Defense shall notify the Secretary of Health and Human Services of the hazardous substances which the Secretary of Defense determines to be the most commonly found unregulated hazardous substances at facilities under his jurisdiction. The notification shall be of not less than the 25 most widely used such substances.

"(2) DEFINITION.—In this subsection, 'unregulated hazardous substance' means a hazardous substance—

"(A) for which no standard is in effect under the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, or the Clean Water Act; and

"(B) for which no water quality criteria are in effect under any provision of the Clean Water Act.

"(b) TOXICOLOGICAL PROFILES.—The Secretary of Health and Human Services shall take such steps as necessary to ensure the timely preparation of toxicological profiles of each of the substances of which the Secretary is notified under subsection (a). The profiles of such substances shall include each of the following:

"(1) The examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

"(2) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

"(3) Where appropriate, toxicological testing directed toward determining the maximum exposure level of a hazardous substance that is safe for humans.

"(c) DOD SUPPORT FOR TOXICOLOGICAL PROFILES.—The Secretary of Defense shall transfer to the Secretary of Health and Human Services such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary for the preparation of such toxicological profiles under subsection (b). The Secretary of Defense and the Secretary of Health and Human Services shall enter into a memorandum of understanding regarding the manner in which this section shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this section.

"(d) EPA HEALTH ADVISORIES.—

"(1) PREPARATION.—At the request of the Secretary of Defense, the Administrator shall in a timely manner prepare health advisories on hazardous substances. Such an advisory shall be prepared on each hazardous substance—

"(A) for which no advisory exists;

"(B) which is found to threaten drinking water; and

"(C) which is emanating from facilities under the administrative jurisdiction of the Secretary.

"(2) CONTENT OF HEALTH ADVISORIES.—Such health advisories shall provide specific advice on the levels of contaminants in drinking water at which adverse health effects would not be anticipated and which include a margin of safety so as to protect the most sensitive members of the population at risk. The advisories shall provide data on one-day, 10-day, and longer-term exposure periods where available toxicological data exist.

"(3) DOD SUPPORT FOR HEALTH ADVISORIES.— The Secretary of Defense shall transfer to the Administrator such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary for the preparation of such health advisories. The Secretary and the Administrator shall enter into a memorandum of understanding regarding the manner in which this subsection shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this subsection.

"(e) CROSS REFERENCE.—Section 116 of CERCLA applies to facilities under the jurisdiction of the Secretary of Defense in the manner prescribed in that section for other Federal facilities.

"(f) FUNCTIONS OF HHS TO BE CARRIED OUT THROUGH ATSDR.—The functions of the Secretary of Health and Human Services under this section shall be carried out through the Administrator of the Agency of Toxic Substances and Disease Registry of the Department of Health and Human Services established under section 116 of CERCLA.

"§ 2705. Notice of environmental restoration activities

"(a) EXPEDITED NOTICE.—The Secretary of Defense shall take such actions as necessary to ensure that the regional offices of the Environmental Protection Agency and appropriate State and local authorities for the State in which a facility under the Secretary's jurisdiction is located receive prompt notice of each of the following:

"(1) The discovery of releases or threatened releases of hazardous substances at the facility.

"(2) The extent of the threat to public health and the environment which may be associated with any such release or threatened release.

"(3) Proposals made by the Secretary to carry out response actions with respect to any such release or threatened release.

"(4) The initiation of any response action with respect to such release or threatened release and the commencement of each distinct phase of such activities.

"(b) COMMENT BY EPA AND STATE AND LOCAL AUTHORITIES.—

"(1) RELEASE NOTICES.—The Secretary shall ensure that the Administrator of the Environmental Protection Agency and appropriate State and local officials have an adequate opportunity to comment on notices under paragraphs (1) and (2) of subsection (a).

"(2) PROPOSALS FOR RESPONSE ACTIONS.—The Secretary shall require that an adequate opportunity for timely review and comment be afforded to the Administrator and to appropriate State and local officials after making a proposal referred to in subsection (a)(3) and before undertaking an activity or action referred to in subsection (a)(4). The preceding sentence does not apply if the action is an emergency removal taken because of imminent and substantial endangerment to human health or the environment and consultation would be impractical.

"(c) TECHNICAL REVIEW COMMITTEE.—Whenever possible and practical, the Secretary shall establish a technical review committee to review and comment on Department of Defense actions and proposed actions with respect to releases or threatened releases of hazardous substances at installations. Members of any such committee shall include at least one representative of the Secretary, the Administrator, and appropriate State and local authorities and shall include a public representative of the community involved.

"§ 2706. Annual report to Congress

"(a) REPORT ON PROGRESS IN IMPLEMENTATION.—The Secretary of Defense shall submit to Congress a report each fiscal year describing the progress made by the Secretary during the preceding fiscal year in implementing the requirements of this chapter.

"(b) MATTERS TO BE INCLUDED.—Each such report shall include the following:

"(1) A statement for each facility under the jurisdiction of the Secretary of the number of individual facilities at such installation at which a hazardous substance has been identified.

"(2) The status of response actions contemplated or undertaken at each such facility.

"(3) The specific cost estimates and budgetary proposals involving response actions contemplated or undertaken at each such facility.

"(4) A report on progress on conducting response actions at sites other than sites on the National Priority List.

"§ 2707. Definitions

"In this chapter:

"(1) 'Environment', 'facility', 'hazardous substance', 'person', 'release', 'removal', 'response', 'disposal', and 'hazardous waste' have the meanings given those terms in section 101 of CERCLA.

"(2) 'Administrator' means the Administrator of the Environmental Protection Agency.".

(2) The table of chapters at the beginning of subtitle A, and at the beginning of part IV of subtitle A, of such title are each amended by inserting after thc item relating to chapter 159 the following new item:

"160. Environmental Restoration .... 2701".

(b) MILITARY CONSTRUCTION PROJECTS.—(1) Chapter 169 of title 10, United States Code, is amended by inserting at the end of subchapter I the following new section:

“§ 2810. Construction projects for environmental response actions

“(a) Subject to subsection (b), the Secretary of Defense may carry out a military construction project not otherwise authorized by law (or may authorize the Secretary of a military department to carry out such a project) if the Secretary of Defense determines that the project is necessary to carry out a response action under chapter 160 of this title or the Comprehensive Environmental Response, Compensation, and Liability Act.

“(b)(1) When a decision is made to carry out a military construction project under this section, the Secretary of Defense shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include—

“(A) the justification for the project and the current estimate of the cost of the project; and

“(B) the justification for carrying out the project under this section.

“(2) The project may then be carried out only—

“(A) after the end of the 21-day period beginning on the date the notification is received by such committees; or

“(B) after each such committee has approved the project, if the committees approve the project before the end of that period.

"(c) In this section, 'response action' has the meaning given that term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act.".

(2) The table of sections at the beginning of subchapter I of such chapter is amended by adding at the end thereof the following new item:

"2810. Construction projects for environmental response actions.".

(c) EFFECTIVE DATE.—Section 2703(a)(2) of title 10, United States Code, as added by subsection (a), shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1986.

SEC. 214. OVERSIGHT AND REPORTING REQUIREMENTS.

Section 301 of CERCLA is amended by adding at the end thereof the following new subsection:

"(h) OVERSIGHT AND REPORTING REQUIREMENTS.—

"(1) CONGRESSIONAL OVERSIGHT.—The appropriate authorizing committees of Congress shall conduct oversight hearings not less often than annually to ensure that this Act is being implemented according to the purposes of this Act and congressional intent in enacting this Act.

"(2) ANNUAL REPORT BY EPA.—The Administrator of the Environmental Protection Agency shall submit a report annually to the Congress on the progress achieved in implementing this Act. In addition such report shall specifically include each of the following—

"(A) A detailed description of each feasibility study carried out at a facility under title I of this Act.

"(B) The status and estimated date of completion of each such study.

"(C) Notice of each such study which will not meet a previously published schedule for completion and the new estimated date for completion.

"(D) An evaluation of newly developed feasible and achievable permanent treatment technologies.

"(E) Progress made in reducing the number of facilities in the Interim Category on the National Priorities List.".

SEC. 215. RADON GAS.

(a) NATIONAL ASSESSMENT.—The Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the "Administrator") shall—

(1) identify the locations in populated areas in the United States where radon gas and radon daughters are forming from naturally occurring deposits of urani-

um and are collecting in residences and other structures;

(2) assess for each location identified under paragraph (1) the amounts of radon gas and radon daughters that are forming and the amounts that are present in residences and other structures; and

(3) determine the level of radon gas and radon daughters which poses a threat to human health and assess for each location identified under paragraph (1) the extent of the threat to human health.

The Administrator shall submit a report to Congress on the results of the assessment conducted under this subsection not later that one year after the date of the enactment of this Act.

(b) DEMONSTRATION PROGRAM.—

(1) IN GENERAL.—The Administrator shall conduct a demonstration program to test methods of reducing or eliminating the threat to human health of radon gas and radon daughters. Such methods shall include venting of residences and other structures and any other methods the Administrator determines may be effective in reducing or eliminating such threat. The demonstration program under this section shall be conducted at the Reading Prong, Pennsylvania and New

Jersey, and at such other sites as the Administrator considers appropriate.

(2) REPORTS.—The Administrator shall submit interim reports not later than September 30, 1986, and September 30, 1987, on the status of the demonstration program carried out under this subsection. The Administrator shall submit a final report on the results of such program not later than December 31, 1988.

(3) AUTHORIZATION.—There is authorized to be appropriated for the fiscal years 1986 through 1988 a total of $2,000,000 to carry out this subsection.

TITLE III—EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW

SUBTITLE A—EMERGENCY PLANNING

SEC. 301. ESTABLISHMENT OF STATE COMMISSIONS AND LOCAL COMMITTEES.

(a) ESTABLISHMENT OF STATE EMERGENCY RESPONSE COMMISSIONS.—Not later than six months after the date of the enactment of this title, the Governor of each State shall appoint an emergency response commission. The Governor may designate as the emergency response commission one or more existing emergency response organizations that are State-sponsored or appointed. The Governor shall, to the extent practicable, appoint persons to the commission who have technical expertise in the emergency response field. The emergency response commission of a State shall appoint local emergency response committees under subsection (b) and shall supervise and coordinate the activities of such committees. If the Governor of any State does not designate a State commission within such period, the Administrator shall operate as the State commission until the Governor makes such designation and may make the initial designations and appointments under subsection (b).

(b) ESTABLISHMENT OF LOCAL EMERGENCY RESPONSE COMMITTEES.—

(1) IN GENERAL.—Not later than six months after the date of the establishment of a State commission under subsection (a), the commission shall—

(A) designate political subdivisions or combinations of political subdivisions as emergency response districts for purposes of this title; and

(B) appoint a local emergency response committee for each emergency response district designated under subparagraph (A).

(2) INTERSTATE AGREEMENTS.—Pursuant to interstate agreements, political subdivisions in more than one State may be included in an emergency response district under paragraph (1)(A) and members of an emergency response committee may be designated under paragraph (1)(B) from each State.

(c) COMPOSITION OF LOCAL COMMITTEES.—A local emergency response committee shall include representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and covered operators.

(d) OFFICERS; AD HOC COMMITTEES.—A local emergency response committee may elect such officers and spokesmen and appoint such ad hoc committees of interested citizens, and request such assistance of State and local officials, as it deems necessary to assist it in carrying out its duties.

(e) REVISIONS.—The emergency response commission of a State may revise its designations and appointments under subsection (b) with respect to any local emergency response committee as it deems appropriate.

SEC. 302. COMPREHENSIVE EMERGENCY RESPONSE PLANS.

(a) PLAN REQUIRED.—Not later than 24 months after the date of the enactment of this title, each local emergency response committee shall complete an emergency response plan designed to minimize the injury to human health and the environment which could result from any hazardous substance emergency arising out of activities carried out at any covered facility located in the emergency response district for which such committee is established. The plan shall be integrated with existing emergency response plans at the discretion of the committee. A covered operator shall submit to the local emergency response committee any information in addition to the information required under section 311 (other than information which may be withheld from disclosure under section 322), with respect to a covered facility that the committee may request for purposes of completing such plan. The committee may revise such plan as necessary to protect human health and the environment.

(b) PLAN PROVISIONS.--Each plan required under this section shall include each of the following at a minimum:

(1) Designation of one or more State or local officials whom the covered operator will notify in case of a hazardous substance emergency.

(2) Designation of the names and emergency telephone numbers of personnel employed by the covered operator who should be contacted in case of a hazardous substance emergency.

(3) A description of measures which should be taken to mitigate and minimize the risks to human health and the environment posed by a hazardous substance emergency.

(4) A description of a system or method and procedures and communications systems (including alarm

and warning systems) to notify members of the affected public of a hazardous substance emergency.

(5) A description of emergency equipment and facilities in the community, and at each facility in the community at which a substantial inventory of a hazardous substance is maintained, and an identification of the persons responsible for such equipment and facilities.

(6) Emergency evacuation plans, as well as an evaluation of the adequacy of existing transportation facilities to accomplish an evacuation.

(7) A description of training programs and drill schedules to be used for purposes of emergency response planning and preparedness.

(8) An evaluation of medical, police, health, and firefighting resources available in the event of a hazardous substance emergency and recommendations, if appropriate, concerning what additional resources should be developed by State or local governments.

(c) REVIEW BY THE GOVERNOR.—After completion of a plan under subsection (a) for an emergency response district, the local emergency response committee shall submit a copy of such plan to the Governor of each State in which such district is located. The Governor or Governors shall review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response plans of other emergency response districts.

(d) ASSISTANCE.—Upon request of a local emergency response committee, the Administrator shall provide technical assistance in developing and implementing an emergency response plan.

SUBTITLE B—NOTIFICATION REQUIREMENTS

SEC. 311. BASIC NOTIFICATION REQUIREMENTS.

(a) SUBMISSION OF MATERIAL SAFETY DATA SHEETS.—

(1) BASIC REQUIREMENT.—The owner or operator of any facility at which any hazardous chemical is produced, used, or stored shall submit a material safety data sheet for each such chemical to the appropriate local emergency response committee and such local and State officials as may have been designated to receive such sheet by such committee.

(2) FURNISHING OF SHEETS TO OTHER OWNERS AND OPERATORS.—

(A) IN GENERAL.—Each owner or operator of a facility who is required to submit a material safety data sheet for a hazardous chemical under paragraph (1) and who supplies such a chemical to any other such owner or operator shall furnish such sheet, and any revised sheet under paragraph (3), to such other facility owner or operator. The initial sheet shall be furnished before, or at the time of, the first shipment of such chemical to such other owner or operator. Any revised sheet shall be furnished before, or at the time of, the first shipment of such chemical to such other owner or operator after such sheet is revised.

(B) UNAVAILABILITY FROM MANUFACTURER OR IMPORTER.—The requirements of this subsection shall not apply to a facility owner or operator (other than a manufacturer or importer of the hazardous chemical)—

(i) who has not received a material safety data sheet for such hazardous chemical from the person who supplied such hazardous chemical to such facility owner or operator; and

(ii) who has made and documented reasonable efforts to obtain such material safety data sheet by contacting such person and requesting such person to send the sheet.

(3) INITIAL SHEET AND UPDATING.—The initial material safety data sheet required under this subsec-

tion with respect to a hazardous chemical shall be provided before the later of—

(A) 12 months after the date of the enactment of this title; or

(B) 3 months after such chemical is first produced, used, or stored at a facility.

Within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical which was originally required to be disclosed on such sheet under this subsection, the sheet shall be revised.

(b) HAZARDOUS SUBSTANCE REPORTS.—

(1) BASIC REQUIREMENT.—The covered operator with respect to each covered facility at which any covered hazardous substance is present in a significant amount shall prepare and submit to the appropriate local emergency response committee a hazardous substance report.

(2) CONTENTS OF REPORT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a hazardous substance report shall contain each of the following items of information with respect to each covered hazardous substance present at the covered facility in a significant amount:

(i) The type and approximate amounts of the covered hazardous substance to be found at the facility.

(ii) A map showing the location at the facility of each such substance stored at the facility.

(iii) Potential routes of human exposure to each such substance.

(iv) Symptoms of such exposure.

(v) Appropriate emergency and first aid procedures for spills, fires, explosions, and other releases involving such substance.

(vi) Emergency telephone numbers for appropriate personnel of the covered operator of the facility.

(B) EXCEPTION WHEN MSDS UNAVAILABLE.—With respect to any covered hazardous substance for which a covered operator has not received a copy of the material safety data sheet required to be furnished under subsection (a)(2), such operator may satisfy the requirements of this subsection by including in a hazardous substance report the information required by clauses (i) and (ii) of subparagraph (A) and a statement that the covered operator has not received such sheet.

(3) INITIAL REPORT AND UPDATING.—The initial report required under this subsection with respect to a covered facility shall be provided before the later of either of the following:

(A) 18 months after the date of the enactment of this title.

(B) 6 months after a facility becomes a covered facility.

The hazardous substance report shall be revised and submitted to the appropriate local emergency response committee every six months. With respect to the requirements contained in paragraph (2)(A)(i), any revised report shall list the average amount of the substance present at the facility during the period since the last report was submitted and the maximum amount of the substance present at such facility at any time during such period.

(4) LIST OF COVERED HAZARDOUS SUBSTANCES AND THRESHOLD FOR REPORTING.—

(A) LIST OF SUBSTANCES.—Not later than 12 months after the date of the enactment of this title, the Administrator shall publish a list of those hazardous substances and hazardous chemicals which the Administrator determines have characteristics of volatility, combustibility, reactivity, dispersability, or toxicity such that the release of the substance or chemical is likely to cause an imminent and substantial endangerment to the public health or the environment. The Administrator may revise such list from time to time.

(B) THRESHOLD FOR REPORTING.—At the time a substance is listed under this paragraph, the Administrator shall determine what is a significant amount of such substance for purposes of the reporting requirements of this subsection.

(C) PETITION.—Any person and any local emergency response committee may petition the Administrator to designate a substance as a covered hazardous substance. Within six months after receipt of such a petition, the Administrator shall either designate such substance as a covered hazardous substance or publish a written explanation of the reasons for the determination that such substance is not a covered hazardous substance.

(5) FORMAT OF REPORTS.—

(A) IN GENERAL.—The Administrator shall publish a uniform format for hazardous substance reports within three months after the date of the enactment of this title.

(B) USE OF MSDS FOR CERTAIN ITEMS.—A covered operator may meet the requirements of clauses (iv), (v), and (vi) of subparagraph (A) of paragraph (2) with respect to a covered hazardous substance by submitting a copy of the most recent material safety data sheet for such substance.

(6) SUPERFUND SITES.—The report required under this subsection for any covered facility referred to in section 326(1)(B) shall not be required to contain any information which is not contained in the remedial investigation and feasibility study for that facility or which is not otherwise available to the covered operator. A report for such a facility shall not be required to be revised under paragraph (3).

(7) OTA REPORT.—Within four years after the date of the enactment of this Act, the Congressional Office of Technology Assessment shall report to Congress on the need for and feasibility of requiring hazardous substance reports from owners or operators of facilities which have been issued permits under section 3005 of the Solid Waste Disposal Act.

(c) EXTREMELY TOXIC SUBSTANCE STATUS SHEETS.—

(1) REQUIREMENT.—

(A) IN GENERAL.—The covered operator of each covered facility—

(i) at which an extremely toxic substance is present during any applicable 12-month period in excess of the 12-month cumulative threshold amount, and

(ii) from which such substance is released into the environment during such period,

shall prepare an extremely toxic substance status sheet for such substance for such facility.

(B) ANNUAL APPLICATION OF REQUIREMENT.—An extremely toxic substance status sheet shall be submitted to the appropriate local emergency response committee not later than 3 months after the date the initial hazardous substance report is submitted under subsection (b)(1) with respect to a facility for which such status sheet is required. For each 12-month period ending on the same date each year thereafter for which the requirements of subparagraph (A) apply, the covered operator shall submit such a status sheet within three months.

(2) CONTENTS OF STATUS SHEET.—An extremely toxic substance status sheet shall contain each of the

following items of information with respect to the covered facility concerned:

(A) The total amount of each extremely toxic substance released into the environment during the preceding 12-calendar month period.

(B) A summary of each report submitted to the Administrator or a State during such 12-month period under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 regarding a release of a reportable quantity of an extremely toxic substance.

(C) A summary of each report submitted to the Administrator or a State during such 12-month period under the Federal Water Pollution Control Act, the Clean Air Act, or the Solid Waste Disposal Act of a discharge into the environment of any hazardous substance in excess of the amount permitted to be discharged under a permit under such Act.

(3) Use of available data.—In order to provide the information required under this subsection, the covered operator may utilize readily available data (including monitoring data) collected pursuant to other provisions of law or, where such data is not readily

available, reasonable estimates of the amounts involved. Nothing in this subsection requires the monitoring or measurement of the quantities, concentration, or frequency of any extremely toxic substance released into the environment beyond that monitoring and measurement required under other provisions of law or regulation.

(4) LIST OF EXTREMELY TOXIC SUBSTANCES AND THRESHOLD FOR REPORTING.—

(A) LIST OF SUBSTANCES.—Not later than 12 months after the date of the enactment of this title, the Administrator shall publish a list of substances which he deems, in his judgment and based on the best information available to him, to be extremely toxic substances. The list may be revised periodically. For purposes of this section, extremely toxic substances are those covered hazardous substances which are so acutely toxic that their release into the environment in any amount or form may present an imminent and substantial endangerment to human health.

(B) THRESHOLD FOR REPORTING.—At the time a substance is listed under this subsection, the Administrator shall also establish a 12-month cumulative threshold amount for such substance for purposes of the reporting requirements of this subsection.

(5) USE OF SHEET.—The sheet required under this subsection is intended to provide general information to the Federal, State, and local governments and the citizens of communities surrounding covered facilities. The sheet shall be available, consistent with section 312(a), to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering, to aid in the development of appropriate regulations, guidelines, and standards, and for other similar purposes.

(6) TELEPHONE INQUIRIES.—The Administrator shall establish a toll-free telephone number, operating 24 hours per day, that is computer accessible, to respond to inquiries concerning the information contained in extremely toxic substance status sheets.

(d) RECORDS.—Each owner or operator under subsection (a) and each covered operator under subsection (b) or (c) shall maintain records of the information filed in compliance with this section for a reasonable period to be determined by the Administrator. The Administrator shall take such steps as may be necessary to assist such covered operators and owners and operators in complying with this section and to reduce unnecessary or burdensome paperwork.

(e) EXEMPTIONS.—

(1) MATERIAL SAFETY DATA SHEETS.—The Administrator may exempt an owner or operator from the requirements of subsection (a) with respect to—

(A) any hazardous chemical or group of hazardous chemicals;

(B) any facility or group of facilities; and

(C) specific activities carried out by such owner or operator in a specific location.

(2) HAZARDOUS SUBSTANCE REPORTS.—The Administrator may exempt from the requirements of subsection (b) reporting with respect to—

(A) any covered hazardous substance or group of covered hazardous substances;

(B) any covered facility or group of covered facilities; and

(C) specific activities carried out by any covered operator in a specific location.

(3) PROCEDURES.—An exemption may be granted under this subsection by the Administrator on his own motion or upon petition of any person. An exemption may be granted only after notice and opportunity for public comment. No exemption may be granted under paragraph (1)(C) or (2)(C) for specific activities carried out by any covered operator or owner or operator until

notice and an opportunity for a hearing have been provided in the locality in which such activities are carried out.

(4) STANDARD FOR EXEMPTION.—An exemption may be granted under this subsection only if the Administrator finds that the covered hazardous substance or hazardous chemical, facility, or activity concerned does not present a reasonable likelihood of injury to human health or the environment.

SEC. 312. PUBLIC AVAILABILITY OF PLANS, DATA SHEETS, REPORTS, STATUS SHEETS, AND EMERGENCY BULLETINS.

(a) AVAILABILITY TO PUBLIC.—Each emergency response plan, material safety data sheet, hazardous substance report, extremely toxic substance status sheet, and emergency bulletin shall be made available to the general public during normal working hours at the location or locations designated by the appropriate local emergency response committee. Upon request by a covered operator, the appropriate local emergency response committee shall withhold from disclosure under this section the information required by section 311(b)(2)(B) to be contained in a hazardous substance report.

(b) NOTICE OF PUBLIC AVAILABILITY.—Each local emergency response committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, hazardous substance reports, and extremely toxic substance status sheets have been submitted under this section. The notice shall state that hazardous substance emergency bulletins may subsequently be issued. Such notice shall announce that members of the public who wish to review any such plan, report, sheet, or emergency bulletin may do so at the location designated by the local emergency response committee.

SEC. 313. PROVISION OF INFORMATION TO HEALTH PROFESSIONALS, DOCTORS, AND NURSES.

(a) DIAGNOSIS OR TREATMENT BY HEALTH PROFESSIONAL.—A covered operator shall provide the specific chemical identity, if known, of a covered hazardous substance or a hazardous chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written agreement of confidentiality under subsection (d). The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that—

(1) the information is needed for purposes of diagnosis or treatment of an individual;

(2) the individual or individuals being diagnosed or treated have been exposed to the substance concerned; and

(3) knowledge of the specific chemical identity of such substance will assist in diagnosis or treatment.

Following such a written request, the covered operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a substance under section 322 when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(b) MEDICAL EMERGENCY.—A covered operator shall provide a copy of a material safety data sheet, a hazardous substance report, or an extremely toxic substance status sheet, including the specific chemical identity, if known, of a covered hazardous substance or a hazardous chemical, to any treating physician or nurse who requests such information if such physician or nurse determines that—

(1) a medical emergency exists;

(2) the specific chemical identity of the covered hazardous substance or hazardous chemical is necessary for or will assist in emergency or first-aid diagnosis or treatment; and

(3) the individual or individuals being diagnosed or treated have been exposed to the substance or chemical concerned.

Immediately following such a request, the owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a substance from a material safety data sheet, a hazardous substance report, or an extremely toxic substance status sheet under section 322 when such information is a trade secret shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the facility owner or operator disclosing such information may require a written confidentiality statement in accordance with subsection (d) and a statement setting forth the items listed in paragraphs (1) through (3) as soon as circumstances permit.

(c) PREVENTIVE MEASURES BY STATE AND LOCAL HEALTH PROFESSIONALS.—

(1) PROVISION OF INFORMATION.—A covered operator shall provide the specific chemical identity, if known, of a covered hazardous substance or a hazardous chemical to any health professional (such as a physician, toxicologist, or epidemiologist)—

(A) who is a State or local government employee or a person under contract with the State or local government, and

(B) who requests such information in writing and provides a written statement of need under this subsection and a written agreement of confidentiality under subsection (d).

(2) WRITTEN STATEMENT OF NEED.—The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:

(A) To assess the hazards of the substance or chemical to which persons living in a State or local community will be exposed.

(B) To conduct or assess sampling of the atmosphere to determine exposure levels of various population groups.

(C) To conduct periodic medical surveillance of exposed population groups.

(D) To provide medical treatment to exposed individuals or population groups.

(E) To conduct studies to determine the health effects of exposure.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the State or local health professional. The authority to withhold the specific chemical identity of a substance under section 322 when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(d) CONFIDENTIALITY AGREEMENT.—Any person obtaining information under subsection (a) or (c) shall, in accordance with such subsection (a) or (c), be required to agree in a written confidentiality agreement that he will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. The confidentiality agreement under this subsection may provide for appropriate legal remedies in the event of a breach of the agreement, including stipulations of a reasonable pre-estimate of likely damages. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing non-contractual remedies to the extent permitted by law.

SEC. 314. HAZARDOUS SUBSTANCE EMERGENCY NOTICE AND BULLETIN.

(a) NOTIFICATION REQUIREMENT.—

(1) IMMEDIATE NOTICE.—In addition to any other notice required by this Act, in the case of any hazardous substance emergency at any covered facility, the covered operator shall immediately notify (by telephone, by radio, or in person) the appropriate local

emergency response committee and any State and local officials designated by such committee to receive such notice of the existence of the hazardous substance emergency. Such notice shall include as much of the information referred to in subsection (b) as is known to the owner or operator at the time notice under this subsection is provided so long as no delay in responding to the emergency results.

(2) EMERGENCY BULLETIN.—In the case of a hazardous substance emergency at any facility, the facility owner or operator shall provide an emergency bulletin to such committee and officials as soon as practicable.

(b) CONTENTS OF EMERGENCY BULLETIN.—Each emergency bulletin under this section shall include a full description of the hazardous substance emergency so that appropriate health and safety measures can be taken. Such notification shall include, at a minimum each of the following:

(1) The chemical name or identity of the hazardous substance or substances involved in the emergency.

(2) The actions taken to respond to the emergency.

(3) The covered operator's best estimate of the scope of the emergency, including the owner or opera-

tor's best estimate of the amount and duration of the release.

(4) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(5) Recommendations for additional actions, if any, that are necessary.

SUBTITLE C—GENERAL PROVISIONS

SEC. 321. STATE AND LOCAL LAW.

(a) IN GENERAL.—Except as provided in subsection (b), nothing in this title shall be construed to limit the ability of any State or locality to require submission of information related to hazardous chemicals or to limit the authority of any State to preempt any local law relating to the submission of information related to hazardous chemicals.

(b) EFFECT ON MSDS REQUIREMENTS.—

(1) Any State or local law enacted after August 1, 1985, which requires the submission of a material safety data sheet from facility owners or operators shall require that the data sheet be identical in content and format to the data sheet required under subsection (a) of section 311. In addition, a State or locality may require the submission of information which is supplemental to the information required on the data sheet,

through additional sheets attached to the data sheet or such other means as the State or locality considers appropriate.

(2) Any State or local law—

(A) enacted after August 1, 1985, and

(B) which requires a facility owner or operator who supplies a hazardous chemical to any other facility owner or operator to furnish a material safety data sheet to such other facility owner or operator,

shall be identical to the requirements under section 311(a)(3).

SEC. 322. TRADE SECRETS.

(a) AUTHORITY TO WITHHOLD INFORMATION.—With regard to a hazardous chemical or covered hazardous substance, any facility owner or operator required to submit or furnish any information to any other person or entity under this title may withhold from such submittal the specific chemical identity, including the chemical name and other specific identification, as defined in regulations prescribed by the Administrator of the Environmental Protection Agency under subsection (b), if the claim that the information withheld is a trade secret can be supported by showing that—

(1) the facility owner or operator has not disclosed the information to any other person, other than a

member of a local emergency response committee, an officer or employee of the United States or a State or local government, an employee of such facility owner or operator, or a person who is bound by a confidentiality agreement,

(2) the information is not required to be disclosed to the public under any other Federal or State law, and

(3) knowledge of the withheld information may give the facility owner or operator an opportunity to obtain an advantage over competitors who do not know or use such information.

(b) TRADE SECRET REGULATIONS.—

(1) IN GENERAL.—The Administrator of the Environmental Protection Agency shall prescribe trade secret regulations which are identical (except for provisions relating to the procedure for the review of petitions challenging trade secret claims, and any minor conforming changes the Administrator considers appropriate), consistent with subsection (a), to the provisions concerning trade secrets in the Occupational Safety and Health Administration Hazard Communication Standard and any revisions of such trade secret provisions prescribed by the Secretary of Labor in accordance with the final ruling of the courts of the United

States in *United Steelworkers of America, AFL–CIO–CLC* v. *Thorne G. Auchter.*

(2) PETITION FOR REVIEW.—The Administrator of the Environmental Protection Agency shall establish a procedure for any affected citizen to petition the Administrator to review a trade secret claim made by a facility owner or operator under this section. Any appropriate United States district court shall have jurisdiction to review a determination by the Administrator under this section.

(3) TIMETABLE.—The Administrator shall prescribe the regulations under paragraph (1) as soon as practicable after the date of the enactment of this Act, and shall prescribe the regulations under paragraph (2) no later than 4 months after the date on which the regulations under paragraph (1) become final.

(c) EXCEPTION FOR INFORMATION PROVIDED TO HEALTH PROFESSIONALS.—Nothing in this section or regulations adopted pursuant to this section shall authorize any person to withhold information which is required to be provided to a health professional or a doctor or nurse in accordance with section 313.

SEC. 323. ENFORCEMENT.

(a) CIVIL PENALTIES.—Any person (other than a governmental entity)—

(1) who violates any requirement of section 311(b), 311(c), or 314 shall be liable to the United States for a civil penalty in an amount not to exceed $20,000 for each such violation; and

(2) who violates any requirement of section 311(a) or 313(b), and any person who fails to furnish information withheld under section 322(a) from a material safety data sheet when requested by the Administrator for purposes of carrying out a review under section 322(b), shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each such violation.

Each day such a violation continues shall, for purposes of this paragraph, constitute a separate violation.

(b) COLLECTION OF PENALTY.—Any civil penalty for which a person is liable under this title shall be collected in an action brought by the United States in the United States district court for the district in which the person from whom the penalty is sought resides or in which such person's principal place of business is located.

(c) SPECIAL ENFORCEMENT PROVISIONS FOR SECTION 313.—Whenever any facility owner or operator required to provide information under section 313(b) to a doctor or nurse who has requested such information fails or refuses to provide such information in accordance with section 313(b), such doctor or nurse may bring an action in the appropriate United States district court to require such facility owner or operator to provide the information. Such court shall have jurisdiction to issue such orders and take such other action as may be necessary to enforce the requirements of section 313(b).

(d) STUDY OF CRIMINAL PENALTIES.—The Attorney General shall study the need for, and appropriateness of, criminal penalties for violations of this title. The Attorney General shall submit to Congress a report on the results of such study, along with recommendations, not later than four years after the date of the enactment of this Act.

SEC. 324. EXEMPTION.

This title shall not apply to the transportation, including the storage incident to such transportation, of any hazardous chemical or covered hazardous substance.

SEC. 325. EMERGENCY TRAINING AND PILOT PROGRAM.

(a) EMERGENCY TRAINING.—

(1) PROGRAMS.—Officials of the United States Government carrying out existing Federal programs for emergency training are authorized to specifically provide training and education programs for Federal, State, and local personnel in hazard mitigation, emergency preparedness, fire prevention and control, disaster response, long-term disaster recovery, national security, technological and natural hazards, and emer-

gency processes. Such programs shall provide special emphasis for such training and education with respect to hazardous chemicals.

(2) STATE AND LOCAL PROGRAM SUPPORT.—There is authorized to be appropriated to the Federal Emergency Management Agency for each of the fiscal years 1986, 1987, 1988, 1989, and 1990, $5,000,000 for making grants to support programs of State and local governments, and to support university-sponsored programs, which are designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. Such programs shall provide special emphasis with respect to emergencies associated with hazardous chemicals. Such grants may not exceed 80 percent of the cost of any such program. The remaining 20 percent of such costs shall be funded from non-Federal sources.

(3) OTHER PROGRAMS.—Nothing in this section shall affect the availability of appropriations to the Federal Emergency Management Agency for any programs carried out by such agency other than the programs referred to in paragraph (2).

(b) PILOT PROGRAM.—

(1) AUTHORITY.—The Administrator shall carry out a pilot program for testing methods for determining

total emissions from facilities of substances described in paragraph (3). In carrying out the program, the Administrator shall use quantitative measurements and analyses to the maximum extent practicable. The Administrator shall enter into a contract with the National Academy of Sciences to develop guidelines for the conduct of the program. The contract shall require the National Academy of Sciences to report such guidelines to the Administrator and Congress within one year after the date of the enactment of this Act. Within six months after receiving the guidelines, the Administrator shall initiate the program.

(2) SELECTION OF FACILITIES.—The Administrator shall carry out the pilot program at the ten facilities owned and operated by the United States Government which, in the Administrator's discretion, are best suited for carrying out the pilot program under this subsection. The facilities selected shall be similar to facilities in the private sector so that the Administrator can determine the applicability of such methods in the private sector.

(3) DESCRIPTION OF SUBSTANCES.—The substances described in this paragraph are each of the following:

(A) Any substance designated as toxic or hazardous by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970.

(B) Any substance listed in the most recent edition of the "Annual Report on Carcinogens" published by the National Toxicology Program of the United States Public Health Service.

(C) Any substance for which a Threshold Limit Value (TLV) has been established by the American Conference of Government Industrial Hygienists.

(D) Any substance listed by the National Fire Protection Association in "Hazardous Chemicals Data" (NFPA 49).

(E) Any substance identified in "Occupational Health Guidelines for Chemical Hazards" published by the National Institute for Occupational Safety and Health.

(F) Any substance listed by the National Fire Protection Association and rated II through IV as health hazards or rated III through VI as flammability or reactivity hazards in "Fire Hazard Properties of Flammable Liquids, Gases, Volatile Solids" (NFPA 325M).

(G) Any substance designated as a carcinogen by the International Agency for Research on Cancer.

(H) Any substance listed as a carcinogen by the Carcinogen Assessment Group of the United States Environmental Protection Agency.

(I) Any pesticide the use of which is controlled under section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act.

(J) Any substance listed in a review by National Cancer Institute scientists published in the Journal of Toxicology and Environmental Health, 8:251–280, tables 3 through 6, and in subsequent published reviews by National Cancer Institute scientists of substances which meet the criteria of the National Toxicology Program for significant carcinogenic effect.

(K) Any substance defined as a "hazardous substance" under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(4) Report.—The Administrator shall submit an interim report to Congress regarding the pilot program within one year after the program is initiated. Within two years after initiating the program, the Administra-

tor shall complete the pilot program and shall submit a final report on the results thereof to Congress. The report shall discuss the technological and economic feasibility of emissions and discharge reporting, as well as the usefulness and value of the information collected. The Administrator shall make recommendations on whether a permanent emissions and discharge and inventory reporting program should be established on a continuing basis and, if so, how such a program should be structured.

(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal years beginning after September 30, 1985, such sums as may be necessary to carry out this subsection.

(c) SAVINGS PROVISION.—Nothing in this title shall affect the requirements of the Occupational Safety and Health Act of 1970.

SEC. 326. DEFINITIONS.

For purposes of this title—

(1) COVERED FACILITY.—The term "covered facility" means—

(A) a facility at which any hazardous chemical is produced, used, or stored; and

(B) a facility listed on the National Priorities List under the Comprehensive Environmental Response, Liability, and Compensation Act of 1980 for which a remedial investigation and feasibilty study has been completed.

(2) COVERED HAZARDOUS SUBSTANCE.—The term "covered hazardous substance" means a substance listed under section 311(b)(4).

(3) COVERED OPERATOR.—The term "covered operator" means any person (including any department, agency, or instrumentality of the United States) who owns or operates a covered facility.

(4) EXTREMELY TOXIC SUBSTANCE.—The term "extremely toxic substance" means a covered hazardous substance listed by the Administrator under section 311(c)(4).

(5) HAZARDOUS CHEMICAL.—The term "hazardous chemical" means any chemical for which a material safety data sheet is required to be submitted under section 1910.1200(g) of title 29 of the Code of Federal Regulations, except that such term does not include the following substances:

(A) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(B) Any manufactured item which contains a hazardous chemical present as a solid which does not result in exposure to the hazardous chemical under normal conditions of use.

(C) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(D) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(6) HAZARDOUS SUBSTANCE EMERGENCY.—The term "hazardous substance emergency" means an accidental or abnormal release of a covered hazardous substance from a covered facility which may present an imminent and substantial endangerment to the public health or the environment. For purposes of this paragraph—

(A) the term "abnormal release" means a release which is not a continuous release and which is in excess of the normal amounts associated with routine operations of the covered facility; and

(B) the term "accidental release" means a release which is not planned.

(7) **MATERIAL SAFETY DATA SHEET.**—The term "material safety data sheet" means the sheet required to be developed under section 1910.1200(g) of title 29 of the Code of Federal Regulations, as that section may be amended from time to time.

(8) **CERCLA TERMS.**—The terms used in this title which are defined for purposes of title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 shall have the meanings provided by section 101 of that Act.

TITLE IV—COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION

SEC. 400. SHORT TITLE.

This title may be cited as the "Comprehensive Oil Pollution Liability and Compensation Act".

Subtitle A—Oil Pollution Liability and Compensation

SEC. 401. DEFINITIONS.

For purposes of this subtitle, the term—

(1) "claim" means a demand in writing for a sum certain;

(2) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from that incident;

(3) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(4) "facility" means a structure, or group of structures, which is either—

(A) located, in whole or in part, on the outer Continental Shelf and used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the outer Continental Shelf, or

(B) licensed under the Deepwater Port Act of 1974;

(5) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

(6) "Fund" means the Marine Oil Pollution Compensation Fund established by subtitle B of this title;

(7) "guarantor" means the person, other than the responsible party, who provides evidence of financial responsibility for a responsible party;

(8) "incident" means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof,

which causes, or poses a substantial threat, of oil pollution;

(9) "inland oil barge" means a non-self-propelled vessel, carrying oil in bulk as cargo or in residue from cargo and certificated to operate only on the internal waters of the United States while operating in such waters;

(10) "internal waters of the United States" means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside that baseline which are a part of the Gulf Intracoastal Waterway;

(11) "lessee" means a person holding a leasehold interest in an oil and gas lease on submerged lands of the outer Continental Shelf granted or maintained under the Outer Continental Shelf Lands Act;

(12) "licensee" means a person holding a license issued under the Deepwater Port Act of 1974;

(13) "mobile offshore drilling unit" means every watercraft or other contrivance (other than a public vessel of the United States) capable of use as a means of transportation on water and as a means of drilling for oil on the outer Continental Shelf;

(14) "natural resources" means living and nonliving resources belonging to, managed by, held in trust

by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(15) "navigable waters" means the waters of the United States, including the territorial sea;

(16) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(17) "oil pollution" means—

(A) the presence of oil in or on the navigable waters or on land within the United States immediately adjacent thereto, or in or on the waters of the contiguous zone—

(i) which has been discharged from a vessel or facility; and

(ii) which has been discharged in quantities which the President has determined may be harmful pursuant to paragraph (4) of subsection (b) of section 311 of the Federal Water Pollution Control Act;

(B) the presence of oil (other than natural seepage) in or on waters outside the territorial limits of the United States and of any foreign country—

(i) which has been discharged in connection with activities conducted under the Outer Continental Shelf Lands Act;

(ii) which has been discharged from a deepwater port licensed under the Deepwater Port Act of 1974 or from a vessel transiting to or from a deepwater port and located in a safety zone of a deepwater port licensed under such Act;

(iii) causing injury to or loss of natural resources; or

(iv) which has been discharged, before being brought ashore in a port in the United States, from a ship that received such oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) for transportation to a port in the United States; and

(C) the presence of oil (other than natural seepage) in or on the waters, including the territorial sea, or adjacent shoreline, of a foreign country—

(i) which has been discharged from a vessel located within the navigable waters;

(ii) which has been discharged in connection with activities conducted under the Outer Continental Shelf Lands Act;

(iii) which has been discharged from a deepwater port licensed under the Deepwater Port Act of 1974 or a vessel transiting to or from a deepwater port and located in a safety zone of a deepwater port under such Act; or

(iv) which, in the case of the waters or adjacent shoreline of Canada, has been discharged, before being brought ashore in a port in the United States, from a ship that received such oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) for transportation to a port in the United States;

(18) "operator" means—

(A) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel; or

(B) in the case of a pipeline, any person, except the owner, who is responsible for the operation of such pipeline by agreement with the owner;

(19) "outer Continental Shelf" has the meaning set forth in subsection (a) of section 2 of the Outer Continental Shelf Lands Act;

(20) "owner" means, in the case of a vessel or a pipeline, any person holding title to, or in the absence of title, any other indicia of ownership of, the vessel or pipeline, whether by lease, permit, contract, license, or other form of agreement, except that such term does not include a person who, without participating in the management or operation of a vessel or a pipeline, holds indicia of ownership primarily to protect his security interest in the vessel or pipeline;

(21) "permittee" means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act;

(22) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or any other commercial, legal, or governmental entity;

(23) "public vessel" means a vessel which—

(A) is owned or chartered by demise, and operated by (i) the United States, (ii) a State or political subdivision thereof, or (iii) a foreign government, and

(B) is not engaged in commercial service;

(24) "removal costs" means—

(A) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, section 5 of the Intervention on the High Seas Act, or subsection (b) of section 18 of the Deepwater Port Act of 1974, and

(B) cleanup costs, other than the costs described in subparagraph (A);

(25) "responsible party" means—

(A) with respect to a vessel or a pipeline, the owner or operator of such vessel or pipeline;

(B) with respect to a facility (other than a deepwater port or pipeline), the lessee or permittee of the area in which such facility is located, or the holder of a right of use and easement granted under the Outer Continental Shelf Lands Act for the area in which such facility is located where such holder is a different person than the lessee or permittee; and

(C) with respect to a deepwater port, the licensee;

(26) "Secretary" means the Secretary of Transportation;

(27) "ship" means a vessel (other than an inland oil barge) carrying oil in bulk as cargo or in residue from cargo;

(28) "United States" and "State" mean the several States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States;

(29) "United States claimant" means any person residing in the United States, the Government of the United States or any agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim; and

(30) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

SEC. 402. COORDINATION WITH INTERNATIONAL CONVENTIONS.

During any period in which both the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution

Damage, 1984, are in force with respect to the United States, this subtitle shall not apply with respect to damage arising out of or directly resulting from oil pollution or a substantial threat of oil pollution to the extent that compensation is available under such conventions and subtitle D.

SEC. 403. DAMAGES AND CLAIMANTS.

(a) DAMAGES FOR WHICH CLAIMS MAY BE ASSERTED.—Claims may be asserted, to the extent provided in this section, for damages for economic loss incurred on or after the effective date of this section and arising out of or directly resulting from oil pollution or the substantial threat of oil pollution for—

(1) removal costs;

(2) injury to, or destruction of, real or personal property;

(3) reasonable costs incurred in (A) assessing both short-term and long-term injury to, or destruction of, natural resources, (B) preparing a restoration and acquisition plan with respect to the damaged resources, and (C) restoring or acquiring the equivalent of the damaged resources;

(4) loss of subsistence use of natural resources;

(5) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such

damages are sustained during the two-year period beginning on the date the claimant first suffers such loss; and

(6) loss of tax revenue for a period of one year due to injury to real or personal property.

(b) REMOVAL COSTS RECOVERABLE BY ALL CLAIMANTS.—

(1) GENERAL RULE.—A claim may be asserted under paragraph (1) of subsection (a) by any person.

(2) LIMITATION ON RECOVERY BY RESPONSIBLE PARTY.—(A) The responsible party with respect to a vessel or facility involved in an incident may assert a claim under paragraph (1) of subsection (a) only if he can show that—

(i) he is entitled to a defense to liability under section 404(c), or

(ii) he is entitled to a limitation of liability under section 404(b).

(B) A claimant who is not entitled to a defense to liability, but who is entitled to a limitation of liability, may assert a claim under paragraph (1) of subsection (a) only to the extent that the sum of the removal costs incurred by the responsible party plus the amounts paid by the responsible party or by the guarantor on behalf of the responsible party for claims asserted under subsection (a) exceeds the amount to which the total of the liability under section 404(a) and removal costs incurred by, or on behalf of, the responsible party is limited under section 404(b).

(c) OTHER DAMAGES RECOVERABLE BY UNITED STATES CLAIMANTS.—

(1) INJURY TO PROPERTY; SUBSISTENCE USE OF NATURAL RESOURCES.—A claim may be asserted under paragraphs (2) and (4) of subsection (a) with respect to oil pollution described in subparagraph (A) or (B) of section 401(17) by any United States claimant, but only if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant.

(2) INJURY TO NATURAL RESOURCES.—A claim may be asserted under paragraph (3) of subsection (a) by the President as trustee for natural resources controlled by the United States or by the Governor of any State for natural resources within the boundary of the State and controlled by the State or a local government within the State.

(3) LOSS OF PROFITS.—A claim may be asserted under paragraph (5) of subsection (a) with respect to oil pollution described in subparagraph (A) or (B) of section 401(17) by any United States claimant, but only if

the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource or, if such activities are seasonal in nature, 25 percent of the claimant's earnings during the season in which such activities took place.

(4) LOSS OF TAX REVENUE.—A claim may be asserted under paragraph (6) of subsection (a) only by a State or political subdivision thereof.

(d) OTHER DAMAGES RECOVERABLE BY FOREIGN CLAIMANTS.—

(1) GENERAL RULE.—A claim may be asserted under paragraph (2), (3), (4), or (5) of subsection (a) with respect to oil pollution described in subparagraph (C) of section 401(17) by a foreign claimant who is a resident of the country in which the oil pollution occurs, to the same extent that a United States claimant would be able to assert a claim with respect to oil pollution described in subparagraph (A) of section 401(17), if—

(A) the foreign claimant is not otherwise compensated for his loss; and

(B) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country of which the claimant is a resident, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

(2) SPECIAL RULE FOR CANADIAN CLAIMANTS RESPECTING TRANS-ALASKA PIPELINE OIL.—In the case of any oil pollution described in section 401(17)(B)(iv) or 401(17)(C)(iv), a claim may be asserted under paragraph (2), (3), (4), or (5) of subsection (a) by a resident of Canada without regard to subparagraph (B) of paragraph (1), to the same extent that a United States claimant would be able to assert a claim with respect to oil pollution described in subparagraphs (A) and (B) of section 401(17).

(e) ATTORNEY GENERAL.—A claim may be asserted under subsection (a) by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this section.

(f) GROUP OF CLAIMANTS.—If the Attorney General fails to act under subsection (e) within sixty days after the date on which the Secretary designates a source under section 406, any member of a group may assert a claim for damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any claim for damages asserted under this section.

SEC. 404. LIABILITY.

(a) JOINT, SEVERAL, AND STRICT LIABILITY.—

(1) GENERAL RULE.—Subject to paragraph (2) of this subsection and subsections (b) and (c), the responsible party with respect to a facility or a vessel (other than a public vessel) that is the source of oil pollution, or poses a substantial threat of oil pollution in circumstances that justify the incurrence of the type of costs described in section 401(24)(A), shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under section 403.

(2) SPECIAL RULE FOR MODU'S.—(A) Except as provided in subparagraph (B), in any case in which a mobile offshore drilling unit is being used as a facility and is the source of oil pollution originating on or above the surface of the water or poses a substantial threat of such oil pollution, such unit shall be deemed to be a vessel which is a ship for purposes of this subtitle.

(B) To the extent that damages for which claims may be asserted under section 403 from any incident described in subparagraph (A) exceed the amount for which the responsible party is liable under subparagraph (A) (as such amount may be limited under subsection (b)(1)(B)), the mobile offshore drilling unit shall be deemed to be a facility covered by subsection (b)(1)(D), except that for purposes of applying subsection (b)(1)(D) the amount specified in such subsection shall be reduced by the amount for which the responsible party with respect to a ship is liable under subparagraph (A).

(C) In the case of any incident described in subparagraph (A)—

(i) which is caused primarily by willful misconduct or gross negligence within the privity or knowledge of both the owner or operator of the mobile offshore drilling unit and the lessee or permittee of the area, or holder of a right of use or easement for the area, in which such unit is located; or

(ii) with respect to which both such owner or operator and such lessee or permittee or holder fail or refuse to report the incident where required by law or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup and removal activities;

such owner or operator and such lessee or permittee or holder shall be jointly, severally, and strictly liable (without limitation under subsection (b)) for all loss for which a claim may be asserted under section 403.

(b) LIMITS ON LIABILITY.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the total of the liability under subsection (a) and any removal costs incurred by, or on behalf of, the responsible party with respect to an incident shall be limited to—

(A) in the case of a vessel other than a ship or an inland oil barge, $500,000 or $300 per gross ton whichever is greater;

(B) in the case of a ship, $3,000,000 or $420 per gross ton, whichever is greater (but not to exceed $60,000,000);

(C) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater; or

(D) in the case of a facility, $50,000,000.

(2) EXCEPTIONS.—Paragraph (1) shall not apply—

(A) when the incident is caused primarily by willful misconduct or gross negligence within the privity or knowledge of a responsible party; or

(B) when a responsible party fails or refuses to report the incident where required by law or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup and removal activities.

(3) Report.—The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations on liability specified in this subsection.

(c) Defenses to Liability.—

(1) Complete defenses.—Except when the responsible party has failed or refused to report an incident where required by law, there shall be no liability under subsection (a) if the responsible party proves that the incident—

(A) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable, and irresistible character, or

(B) was wholly caused by an act or omission of a person other than—

(i) a responsible party;

(ii) an employee or agent of a responsible party; or

(iii) one whose act or omission occurs in connection with a contractual relationship with a responsible party.

(2) Partial defenses.—There shall be no liability under subsection (a)—

(A) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(B) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(d) LIABILITY OF FUND.—

(1) GENERAL RULE.—Except as provided in subtitle B, the Fund shall be liable for damages for which claims may be asserted under section 403 and for which claims are presented under this subtitle, to the extent that the damages are not otherwise compensated.

(2) DEFENSES TO LIABILITY.—Except for the removal costs specified in section 401(24)(A), there shall be no liability under paragraph (1)—

(A) where the incident is caused wholly by an act of war, hostilities, civil war, or insurrection;

(B) as to a particular claimant, where the incident or the economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(C) as to a particular claimant, to the extent that the incident or the economic loss is caused by the negligence of that claimant.

(e) LIABILITY FOR INTEREST.—

(1) GENERAL RULE.—The responsible party or his guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of a claim under section 403 for the period described in paragraph (2).

(2) PERIOD FOR WHICH INTEREST IS OWED.—(A) Except as provided in subparagraph (B), the period for which interest shall be paid under paragraph (1) is the period beginning on the date on which the claim is presented to the responsible party or guarantor and ending on the date on which the claimant is paid, inclusive.

(B) If the responsible party or guarantor offers to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim, the period described in subparagraph (A) shall not include the period beginning on the date such offer is made and ending on the date such offer is accepted. If such offer is made within sixty days after the date upon which the claim is presented, or of the date upon which advertising is begun pursuant to section 406, whichever is later, the period described in subparagraph (A) shall not include any period before such offer is accepted.

(3) RATE OF INTEREST.—The interest paid under this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of 180 days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve bulletin.

(4) RELATIONSHIP TO LIABILITY LIMITS.—Interest under this subsection shall be in addition to damages for which claims may be asserted under section 403 and shall be paid without regard to any limitation of liability under subsection (b). The payment of interest under this subsection by a guarantor shall be subject to section 405(e).

(f) AGREEMENTS.—

(1) LIABILITY NOT TRANSFERABLE.—A responsible party may not transfer the liability imposed under this section to any other person.

(2) INDEMNIFICATION AGREEMENTS.—Nothing in this title shall preclude an agreement whereby a person who, by an agreement with a responsible party, agrees to indemnify the responsible party for the liability imposed under subsection (a).

(g) RELATIONSHIP TO OTHER CAUSES OF ACTION.—Nothing in this subtitle shall bar a cause of action that a responsible party subject to liability under this section or a guarantor has or would have by reason of subrogation or otherwise against any person.

(h) RELATIONSHIP TO OTHER LAW.—To the extent that it is in conflict with, or otherwise inconsistent with, any other law relating to liability or the limitation thereof, this section supersedes such other law.

SEC. 405. FINANCIAL RESPONSIBILITY.

(a) VESSELS.—

(1) REQUIREMENT.—The responsible party with respect to each vessel (except a public vessel or a non-self-propelled vessel that does not carry oil as cargo or fuel) over 300 gross tons that uses a facility or the navigable waters shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum liability under section 404 of this subtitle to which the responsible party would be exposed in a case where he would be entitled to limit his liability in accordance with subsection (b) of section 404. In cases where a responsible party owns or operates more than one vessel subject to this subsection, evidence of financial responsibility need be established

only to meet the maximum liability applicable to the largest of such vessels.

(2) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have the certification required under this subsection or the regulations issued hereunder.

(3) DENYING ENTRY TO OR DETAINING VESSELS.—The Secretary of the department in which the Coast Guard is operating may (A) deny entry to any facility, to any port or place in the United States, or to the navigable waters, or (B) detain at the facility or at the port or place in the United States, any vessel subject to this subsection that, upon request, does not produce the certification required under this subsection or regulations issued hereunder.

(b) FACILITIES.—The responsible party with respect to each facility shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the responsible party would be exposed in a case where he would be entitled to limit his liability in accordance with subsection (b) of section 404. In cases where the responsible party is responsible for more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to one such facility.

(c) METHODS.—Financial responsibility under this section may be established by any one, or by any combination, of the following methods acceptable to the Secretary: evidence of insurance, surety bond, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(d) CLAIMS AGAINST GUARANTOR.—Any claim authorized by section 403(a) may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section for any responsible party with respect to a facility or vessel. In defending against such a claim, the guarantor may invoke all rights and defenses which would be available to the responsible party under this subtitle. He may also invoke the defense that the incident was caused by the willful misconduct of the responsible party, but he may not invoke any other defense that he might be entitled to invoke in proceedings brought by the responsible party against him.

(e) LIMITATION ON GUARANTOR'S LIABILITY.—Nothing in this subtitle shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceeds, in the aggregate, the amount of financial responsibility which that guarantor has provided for the responsible party for any vessel or facility that was a source of oil pollution in that incident. Nothing in this subsection shall be construed to limit any other statutory, contractual, or common law liability of a guarantor to any responsible party for whom such guarantor provides evidence of financial responsibility including, but not limited to, the liability of such guarantor for negotiating in bad faith a settlement of any claim.

SEC. 406. DESIGNATION AND ADVERTISEMENT.

(a) DESIGNATION OF SOURCE AND NOTIFICATION.— When the Secretary receives information of an incident that involves oil pollution, he shall, where possible and appropriate, designate the source or sources of the oil pollution. If a designated source is a vessel or a facility, the Secretary shall immediately notify the responsible party and the guarantor, if known, of that designation.

(b) ADVERTISEMENT BY THE RESPONSIBLE PARTY OR GUARANTOR.— If a responsible party or guarantor fails to inform the Secretary, within five days after receiving notification of a designation under subsection (a), of his denial of the designation, such party or guarantor shall advertise the designation and the procedures by which claims may be presented to such party or guarantor, in accordance with regulations promulgated by the Secretary. Advertisement under the preceding sentence shall begin no later than 15 days after the date of the designation made under subsection (a). If advertisement is not otherwise made in accordance with this subsection, the Secretary shall promptly and at the expense of the responsible party or the guarantor involved, advertise the designation and the procedures by which claims may be presented to the responsible party or guarantor. Advertisement under this subsection shall continue for a period of no less than 30 days.

(c) ADVERTISEMENT BY THE SECRETARY.—If—

(1) the responsible party and the guarantor both deny a designation within five days after receiving notification of a designation under subsection (a),

(2) the source of the oil pollution was a public vessel, or

(3) the Secretary is unable to designate the source or sources of the oil pollution under subsection (a),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Fund.

SEC. 407. CLAIMS SETTLEMENT.

(a) PRESENTATION TO RESPONSIBLE PARTY OR GUARANTOR.—Except as provided in subsection (b), all claims shall be presented to the responsible party or guarantor of the source designated under section 406(a).

(b) PRESENTATION TO FUND.—Claims may be presented to the Fund—

(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 406(c);

(2) by a responsible party who may assert a claim under section 403(a); or

(3) by the Governor of a State for cleanup costs incurred by that State.

(c) ELECTION.—If a claim is presented in accordance with subsection (a) and—

(1) each person to whom the claim is presented denies all liability for the claim, or

(2) the claim is not settled by any person by payment within 180 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to section 406(b), whichever is later,

the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund. Such an election shall be irrevocable and exclusive.

(d) UNCOMPENSATED DAMAGES.—If a claim is presented in accordance with subsection (a) and full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 404 or because the responsible party and his guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Fund.

(e) TRANSMITTAL OF CLAIM AND DOCUMENTS.—In the case of a claim which has been presented to any person under subsection (a) and which is being presented to the Fund under subsection (c) or (d), that person, at the request of the claimant, shall transmit the claim and supporting documents to the Fund. The Secretary may, by regulation, prescribe the documents to be so transmitted and the terms under which they are to be transmitted.

(f) PROCEDURES.—The Secretary shall establish procedures and standards for the prompt appraisal and settlement of claims against the Fund, including procedures for ensuring the rapid and equitable settlement of claims submitted by the Governor of any State for cleanup costs incurred by that State.

(g) USE OF PRIVATE ORGANIZATIONS AND FEDERAL PERSONNEL.—The Secretary may use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Fund and may contract for those facilities and services. To the extent necessitated by extraordinary circumstances, where the services of private organizations or State agencies are inadequate, the Secretary may use Federal personnel, on a reimbursable basis, to process claims against the Fund.

(h) JUDICIAL REVIEW.—Any claimant, or any other person suffering legal wrong because of, or adversely affected or aggrieved by, a final determination of the Secretary with respect to a claim, may bring an action for judicial review of the determination in accordance with chapter 7 of title 5, United States Code. Such action shall be brought under section 409 and shall be the exclusive judicial remedy with respect to such final determination of the Secretary. Such an action shall be filed not later than thirty days after the Secretary issues notification of the final determination. Venue for any such action shall lie in any district wherein the claimant resides, in addition to any district described in section 409(b).

(i) ACTIONS AGAINST RESPONSIBLE PARTY OR GUARANTOR.—

(1) SERVICE OF PLEADINGS ON FUND.—In any action brought under this subtitle against a responsible party or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Fund at the same time those pleadings are served upon the opposing parties.

(2) INTERVENTION OF FUND.—The Fund may intervene as a party as a matter of right in any action in

which a complaint has been served upon the Fund under paragraph (1).

(3) Admission of liability.—In any action to which the Fund is a party, if the responsible party or his guarantor admits liability under this subtitle, the Fund shall be dismissed therefrom to the extent of the admitted liability.

(4) Effect of judgment.—If the Fund has been served a copy of the complaint and all subsequent pleadings in an action referred to in paragraph (1), the Fund shall be bound by any judgment entered therein, whether or not the Fund was a party to the action.

(5) Failure to serve pleadings.—(A) If the plaintiff fails to serve a copy of the complaint upon the Fund as required by paragraph (1), the plaintiff shall not recover from the Fund any sums not paid by the defendant.

(B) If the defendant fails to serve a copy of the initial answer to a complaint upon the Fund as required by paragraph (1), the limitation of liability otherwise permitted by subsection (b) of section 404 shall not be available to the defendant.

(C) If neither the plaintiff nor the defendant serves a copy of the complaint and all subsequent pleadings upon the Fund as required in paragraph (1), the Fund may serve a motion for a new trial for the purposes specified in this subparagraph. The motion must be served not later than ten days after the Fund has received notice of the entry of the judgment in the action, but in no case later than 90 days after the entry of that judgment. The Fund must establish in its motion that, due to the failure of the plaintiff or defendant to comply with paragraph (1), the Fund failed to receive timely notice of one or more issues raised in the action, which might affect the liability of the Fund in any case brought under this subtitle. When the Fund does so, the court shall open the judgment, if one has been entered, and shall take additional pleadings and testimony on the identified issue or issues. The court may amend findings of fact and conclusions of law or make new findings and conclusions and direct the entry of a new judgment in the action.

(j) JOINDER OF PARTIES.—In any action brought against the Fund the plaintiff may join any responsible party or his guarantor, and the Fund may implead any person, who is or may be liable to the Fund.

(k) PERIOD OF LIMITATIONS.—No claim may be presented, nor may any action be commenced for damages recoverable under this subtitle, unless that claim is presented to, or that action is commenced against, a responsible party or his guarantor or against the Fund as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under subsection (a) of section 403, or within six years of the date of the incident which resulted in that loss, whichever is earlier.

SEC. 408. SUBROGATION.

(a) RIGHT OF SUBROGATION.—Any person, including the Fund, who compensates any claimant for an economic loss compensable under section 403 shall be subrogated to all rights, claims, and causes of action which that claimant has under this subtitle.

(b) RECOVERY BY FUND.—

(1) DENIAL OF SOURCE DESIGNATION OR LIABILITY.—In a case in which the Fund has compensated a claimant for a claim presented to the Fund under section 407(b)(1) or 407(c)(1), the Fund shall recover under subsection (a)—

(A) the amount the Fund has paid to the claimant;

(B) interest on that amount for the period beginning on the date on which the claim was first presented by the claimant to the Fund or the responsible party or guarantor and ending on the date on which the Fund is paid by the responsible party or guarantor, except that if the Fund offered to the claimant the amount finally paid by the Fund to the claimant in satisfaction of the claim against the Fund the responsible party or guarantor shall not be liable for interest for the period beginning on the date the Fund made such offer and ending on the date on which the claimant accepted such offer; and

(C) all costs incurred by the Fund by reason of the claim of the claimant against the Fund and by reason of the claim of the Fund against the responsible party or guarantor.

(2) FAILURE TO SETTLE WHERE PAYMENT BY FUND EXCEEDS OFFER BY RESPONSIBLE PARTY.—In a case in which the Fund has compensated a claimant for a claim presented to the Fund under section 407(c)(2) where the amount the Fund has paid to the claimant exceeds the largest amount, if any, the responsible party or guarantor offered to the claimant in satisfaction of the claim of the claimant against the responsible party or guarantor, the Fund shall recover under subsection (a)—

(A) the amount the Fund has paid the claimant, except that the portion of such amount in excess of the amount offered to the claimant by the responsible party or guarantor shall be subject to dispute by the responsible party or guarantor;

(B) interest on the portion of such excess, if any, which is recovered by the Fund, for a period determined in the same manner as in paragraph (1)(B); and

(C) all costs incurred by the Fund by reason of the claim of the Fund against the responsible party or guarantor.

(3) FAILURE TO SETTLE WHERE PAYMENT OF FUND DOES NOT EXCEED OFFER BY RESPONSIBLE PARTY.—In a case in which the Fund has compensated a claimant for a claim presented to the Fund under section 407(c)(2) where the amount the Fund has paid to the claimant is less than or equal to the largest amount the responsible party or guarantor offered to the claimant in satisfaction of the claim of the claimant against the responsible party or guarantor, the Fund shall recover under subsection (a)—

(A) the amount the Fund has paid to the claimant; and

(B) interest—

(i) for the period beginning on the date on which the claim was presented by the claimant to the responsible party or guarantor and ending on the date on which the responsible party or guarantor offered to the claimant the largest amount referred to in this paragraph, except that the responsible party or guarantor offered such amount within sixty days after the date upon which the claim of the claimant was presented to the responsible party or guarantor or advertising was commenced under section 406, whichever is later, the responsible party or guarantor shall not be liable for interest for such period; and

(ii) for the period beginning on the date on which the claim of the Fund against the responsible party or guarantor was presented to the responsible party or guarantor to the date on which the Fund is paid, inclusive, except that if the responsible party or guarantor offers to the Fund the amount finally paid to the Fund in satisfaction of the claim of the Fund, interest shall not be paid for the period beginning on the date on which such offer is made and ending on the date on which the Fund accepts that offer, inclusive.

(4) SPECIAL RULES.—For purposes of this subsection—

(A) interest shall be calculated in accordance with section 404(e); and

(B) costs recoverable under paragraphs (1)(C) and (2)(C) include, but are not limited to, processing costs, investigating costs, court costs, and attorney's fees.

(c) PAYMENT OF CERTAIN INTEREST TO CLAIMANT.—The Fund shall pay over to the claimant that portion of any interest the Fund recovers under subsections (b)(1)(B) and (b)(2)(B) for the period beginning on the date on which the claim of the claimant was first presented to the Fund or the responsible party or guarantor to the date upon which the claimant was paid by the Fund, inclusive.

(d) APPLICATION OF LIABILITY LIMITS.—The Fund is entitled to recover for all interest and costs specified in subsection (b) without regard to any limitation of liability to which the responsible party or guarantor may otherwise be entitled. The payment of such interest and costs by a guarantor shall be subject to section 405(e).

SEC. 409. JURISDICTION AND VENUE.

(a) JURISDICTION.—The United States district courts shall have exclusive original jurisdiction over all controversies arising under this subtitle and subtitles B and C, without regard to the citizenship of the parties or the amount in controversy.

(b) VENUE.—Unless otherwise provided in this title, venue shall lie in any district wherein the injury complained of occurred, or wherein the responsible party or guarantor resides, may be found, or has his principal office. For purposes of this section, the Fund resides in the District of Columbia.

SEC. 410. RELATIONSHIP TO OTHER LAW.

(a) PREEMPTION.—Except as provided in this title—

(1) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for an economic loss compensable under this subtitle,

(2) no person may be required to contribute to any fund, the purpose of which is to compensate for damages for an economic loss described in section 403(a), except that, for a period of three years beginning on the effective date of this section, any State which on such date has in effect a statute that requires such contributions may continue to require such contributions within the limits established by such statute as those limits exist on such date, and

(3) no person may be required to establish or maintain evidence of financial responsibility relating to

the satisfaction of a claim compensable under this subtitle.

(b) STATE FINANCING OF PREPARATION FOR OIL POLLUTION CLEANUP.—Nothing in this title shall preclude any State from imposing a tax or fee upon any person or upon oil in order to finance the purchase and prepositioning of oil pollution cleanup and removal equipment or to finance other preparations for responding to a discharge of oil which affects such State.

(c) ACTIONS BY FUND.—Nothing in subsection (a) shall prohibit an action by the Fund under any other provision of law to recover compensation paid under this subtitle.

SEC. 411. PENALTIES.

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 405 or the regulations issued thereunder or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. The Secretary may compromise, modify, or remit with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

SEC. 412. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years beginning on or after October 1, 1985, such sums as may be necessary to carry out this title.

Subtitle B—Marine Oil Pollution Compensation Fund

SEC. 421. MARINE OIL POLLUTION COMPENSATION FUND.

(a) ESTABLISHMENT.—The Marine Oil Pollution Compensation Fund is established in the Treasury and shall be administered by the Secretary. The Fund may sue and be sued in its own name.

(b) COMPOSITION OF THE FUND.—There shall be deposited in the Fund—

(1) premiums paid to the Fund under section 422;

(2) amounts recovered, collected, or received on behalf of the Fund under subtitle A;

(3) amounts transferred to the Fund under sections 442(d) and 422(e);

(4) income earned on investments under subsection (d); and

(5) amounts borrowed under section 423(d).

(c) PURPOSES FOR WHICH FUND IS AVAILABLE.—The Fund shall be available for purposes of—

(1) the immediate payment of removal costs described in section 401(24)(A) and of reasonable costs incurred by the President or the Governor of a State as trustee under section 403(a)(3) in assessing damaged natural resources and preparing a restoration and acquisition plan with respect to the damaged natural resources;

(2) the payment of claims under subtitle A for damage which is not otherwise compensated;

(3) carrying out subsections (c), (d), (i), and (l) of section 311 of the Federal Water Pollution Control Act with respect to any discharge of oil (as defined in that section);

(4) carrying out section 5 of the Intervention on the High Seas Act relating to oil pollution or the substantial threat of oil pollution;

(5) the payment of costs of administration of this title; and

(6) the payment of contributions to the International Fund in accordance with section 464.

(d) INVESTMENT.—The Secretary shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet current withdrawals. Such investments shall be in obligations of the United States and obligations guaranteed as to principal and interest by the United States, with maturities suitable for the needs of the Fund and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities, adjusted to the nearest one-eighth of 1 percent. Except as provided in subsection (e), the income on such investments shall be credited to and form a part of the Fund. The Secretary shall not sell investments in excess of $100,000,000 at one time without the approval of the Secretary of the Treasury. The Secretary of the Treasury may waive the requirement for approval under this subsection for any period of time or under any conditions as the Secretary of the Treasury may decide.

(e) REBATE.—Whenever the amount in the Fund (including the value of obligations held under subsection (d)) exceeds $300,000,000, the amount of any income from such obligations shall be rebated to the owners of oil with respect to which premiums were first paid under section 422 and with respect to which a rebate has not previously been made under this subsection. Payment of rebates required by the preceding sentence shall be made not less often than annually. If for any reason such income cannot be rebated under this subsection after due diligence to do so, the amount of such income shall be retained by the Fund.

SEC. 422. PREMIUMS.

(a) AMOUNT.—A premium not to exceed 1.3 cents per barrel shall be paid to the Secretary for deposit into the Fund on—

(1) crude oil or other petroleum products entered into the United States for consumption, use, or warehousing, by the person so entering the crude oil or other petroleum product;

(2) crude oil received at a United States refinery, by the operator of that refinery; and

(3) crude oil exported from the United States, by the person exporting the crude oil.

(b) CREDITS FOR CONTRIBUTIONS TO DEEPWATER PORT AND OFFSHORE OIL FUNDS.—There shall be credited against the amount of premiums imposed on any person under subsection (a) of this section the amount paid by such person into the Deepwater Port Liability Fund and the Offshore Oil Pollution Compensation Fund. A person entitled to a credit under this subsection may transfer that entitlement to another person.

(c) PROHIBITION ON DOUBLE COLLECTION.—No premium shall be collected under this section with respect to any oil if the person who would be liable for the premium establishes that a premium has been previously imposed under this section with respect to that oil.

(d) EFFECTIVE PERIOD.—The premium imposed by subsection (a) shall only be in effect during any period when the amount in the Fund (including the value of any securities held by the Fund pursuant to section 421(d)) is less than $200,000,000.

(e) PROCEDURES.—The Secretary shall by regulation establish procedures for the establishment and collection of the premium imposed by subsection (a).

(f) COLLECTION.—The Fund may bring an action in the district court of the United States for the collection of any premium required to be paid under this section.

SEC. 423. LIMITATION ON FUND'S LIABILITY.

(a) CLAIMS PAYABLE ONLY FROM FUND.—Any claim filed against the Fund may be paid only out of the Fund. Nothing in this title (or in any amendment made by this title) shall authorize the payment by the United States of any additional amount with respect to any such claim out of any source other than the Fund.

(b) PROHIBITION ON REDUCING FUND BELOW $30,000,000.—No amount in the Fund may be used to pay any claim, except for removal costs, to the extent that the payment of that claim would result in the Fund having an amount less than $30,000,000.

(c) PRIORITY OF CLAIMS.—If at any time the Fund is unable by reason of subsection (b) to pay all of the claims, except for removal costs, payable at that time, those claims shall, to the extent permitted under subsection (b), be paid in full in the order in which they were finally determined. The Secretary may borrow under subsection (d) for purposes of paying such claims in such order.

(d) BORROWING AUTHORITY.—The Secretary is authorized to issue to the Secretary of the Treasury notes or other obligations, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed upon by the Secretary and the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes or other obligations issued by the Secretary under this subsection, and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code. The purposes for which securities may be issued under that chapter, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. The outstanding indebtedness under this subsection shall not exceed $300,000,000 at any time.

(e) LIABILITY LIMIT PER INCIDENT.—The liability of the Fund under this title with respect to one incident shall not exceed $200,000,000. If the Fund is unable by reason of the preceding sentence to pay all claims with respect to the incident, the claims shall be reduced proportionately.

SEC. 424. SERVICES AND FACILITIES OF OTHER AGENCIES.

The Fund may, with the consent of the agency concerned, accept and use, on a reimbursable basis, the officers, employees, services, facilities, and information of any agency of the Federal Government.

SEC. 425. PENALTY FOR FAILURE TO PAY PREMIUM.

Any person who fails to pay any premium as required by this title shall be liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary. Such penalty shall be in addition to the premium required to be paid and interest on the premium in an amount equal to the amount the premium would have earned if paid when due and invested in accordance with section 421(d). Upon the failure of any person so liable to pay any penalty, premium, or interest upon demand, the Attorney General may, at the request of the Secretary, bring an action in the name of the Fund against that person for the amount. If the Attorney General does not bring an action within 30 days, the Secretary may do so in the name of the Fund.

SEC. 426. COORDINATION WITH OTHER PROVISIONS OF THIS TITLE.

(a) PREVIOUS CLAIMS TO BE PAID FROM FUND.—If any provision of this title provides that the balance in any fund (hereinafter in this subsection referred to as the "transferor fund") is to be transferred to the Marine Oil Pollution Compensation Fund, any claim which arises before the effective date of such transfer (to the extent such claim would have been payable out of the transferor fund), shall be payable out of the Marine Oil Pollution Compensation Fund notwithstanding any of the limitations imposed by this subtitle.

(b) TRANS-ALASKA PIPELINE LIABILITY FUND.—(1) If the Secretary or the Secretary's delegate determines that there is a Trans-Alaska Pipeline Liability Fund deficit, the premium imposed by section 422 on oil first transported through the Trans-Alaska Pipeline after the date of that determination shall be increased by 2 cents per barrel until the total amount of the increased premiums equals the deficit.

(2) For purposes of paragraph (1) of this subsection, the term "Trans-Alaska Pipeline Liability Fund deficit" means the excess (if any) of—

(A) the amount certified by the Secretary of the Interior as the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund under section 442(a)(3) of this title, over

(B) the total amount of the assets of the Trans-Alaska Pipeline Liability Fund as of the effective date of this section.

SEC. 427. DEFINITIONS AND SPECIAL RULES.

(a) DEFINITIONS.—For purposes of this subtitle—

(1) terms defined in subtitle A have the same meanings when used in this subtitle;

(2) the term "barrel" means forty-two United States gallons at sixty degrees Fahrenheit; and

(3) the term "United States", in addition to the meaning given in section 401, includes the outer Continental Shelf and any foreign trade zone of the United States.

(b) SPECIAL RULE.—In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at the refinery at the time so produced.

Subtitle C—Regulations, Effective Dates, and Savings Provisions

SEC. 441. EFFECTIVE DATES.

(a) PROVISIONS TAKING EFFECT ON DATE OF ENACTMENT.—This section, section 401, section 402, section 412, subtitle B (other than sections 421(c), 422 (a), (b), (c), and (e), 423 (b), (c), (d), and (e), and 425), section 442(a) (1) and (3), section 443, section 444, and each provision of subtitle A that authorizes the promulgation of regulations shall be effective on the date of the enactment of this title.

(b) SUBTITLE D.—Subtitle D shall take effect on the first date on which both the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage are in force with respect to the United States.

(c) PROVISIONS TAKING EFFECT IN 180 DAYS.—All other provisions of this title, and the regulations issued under this title, shall take effect 180 days after the date of enactment of this title, except that the penalty prescribed by section 411 for failure to comply with the requirements of section 405 or the regulations issued thereunder shall not be effective until the ninetieth day after issuance of those regulations or the two hundred and seventieth day after the date of enactment of this title, whichever is earlier.

(d) REGULATIONS RESPECTING FINANCIAL RESPONSIBILITY.—Any regulation respecting financial responsibility issued pursuant to any provision of law repealed by section 442, and in effect on the day immediately preceding the effective date of section 442, shall remain in force until superseded by regulations issued under subtitle A.

SEC. 442. CONFORMING AMENDMENTS.

(a) TRANS-ALASKA PIPELINE AUTHORIZATION ACT.—(1) The first sentence of subsection (b) of section 204 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(b); 87 Stat. 586) is amended by inserting "in the State of Alaska" after "any area" and by inserting "related to the trans-Alaska oil pipeline" after "any activities". Such subsection is further amended by inserting at the end thereof the following new sentence: "This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 401 of the Comprehensive Oil Pollution Liability and Compensation Act.".

(2) Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) is repealed. Such repeal shall not affect the applicability of such subsection to claims arising before the effective date of this paragraph. Notwithstanding section 441, the repeal of—

(A) paragraph (4) of such subsection (establishing the Trans-Alaska Pipeline Liability Fund),

(B) paragraph (6) of such subsection (to the extent it permits costs of administration to be paid from the Fund and permits amounts in the Fund to be invested), and

(C) paragraph (8) of such subsection (permitting recovery by subrogation),

shall only become effective upon the payment by the Board of Trustees of the Trans-Alaska Pipeline Liability Fund of all claims certified under paragraph (3) of this subsection, the rebate of all remaining amounts under paragraph (3) of this subsection, and the completion of all actions required to carry out paragraph (3) of this subsection.

(3)(A) Not later than 210 days after the date of enactment of this paragraph, the Secretary of the Interior shall certify to the Secretary of Transportation the total amount of claims outstanding against such Fund, as of the effective date of paragraph (2) of this subsection. The amount in the Trans-Alaska Pipeline Liability Fund exceeding the total amount certified under the preceding sentence shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(B) After the settlement of all claims described in subparagraph (A) and the completion of all actions, if any, by the Trans-Alaska Pipeline Liability Fund for recovery of amounts paid on such claims, the remaining amounts in such

Fund shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(C) Whenever a rebate is made on a pro rata basis to the owners of oil under subparagraph (A) or (B), each such owner's share of the rebate shall be an amount determined by dividing the amount contributed by such owner to the Trans-Alaska Pipeline Liability Fund by the total amount contributed by all such owners to such Fund.

(D) Trustees and former trustees of the Trans-Alaska Pipeline Liability Fund who were designated by the Secretary of the Interior shall not be subject to any liability incurred by that Fund or by the present and past officers and trustees of that Fund, other than liability for gross negligence or willful misconduct.

(b) INTERVENTION ON THE HIGH SEAS ACT.—Section 17 of the Intervention on the High Seas Act (33 U.S.C. 1486; 88 Stat. 10) is amended to read as follows:

"SEC. 17. The Marine Oil Pollution Compensation Fund established under subtitle B of the Comprehensive Oil Pollution Liability and Compensation Act shall be available to the Secretary for actions and activities relating to oil pollution (as defined in section 401 of that Act), or the substantial threat of oil pollution, taken under section 5 of this Act.".

(c) **Federal Water Pollution Control Act.**—Section 311 of the Federal Water Pollution Control Act is amended as follows:

(1) Subsection (a) is amended by striking out the period at the end of paragraph (17) and inserting in lieu thereof a semicolon and by adding at the end the following new paragraph:

"(18) 'person in charge' means the individual immediately responsible for the operation of a vessel or facility.".

(2) Paragraph (5) of subsection (b) is amended in the last sentence by inserting after "person" the following: "or his employer".

(3) Subparagraph (A) of paragraph (6) of subsection (b) is amended—

(A) in the first and second sentences, by striking out "or person in charge" each place it appears and inserting in lieu thereof "person in charge, or employer of such person in charge"; and

(B) in the third sentence, by striking out "the owner or operator" and inserting in lieu thereof "whoever being".

(4) Subparagraph (B) of paragraph (6) of subsection (b) is amended in the first and second sentences by

striking out "or person in charge" each place it appears and inserting in lieu thereof "person in charge, or employer of such person in charge".

(5) Subsection (c)(2)(H) is amended by striking out "from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal" and inserting in lieu thereof the following: ", in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred in such removal from the Marine Oil Pollution Compensation Fund".

(6) Subsection (d) is amended by striking out the last sentence.

(7) Subsections (f), (g), and (i) of section 311 of the Federal Water Pollution Control Act shall not apply with respect to any discharge of oil resulting in damages for which a claim may be asserted under subtitle A of this title.

(8) Subsection (i) is amended by striking out "(1)" after "(i)" and by striking out paragraphs (2) and (3).

(9)(A) Subsection (k) is repealed, effective upon the payment from the fund established by such subsection of all claims certified under subparagraph (B) and all remaining amounts to the general fund of the Treasury under subparagraph (B).

(B) Not later than 180 days after the effective date of this paragraph, the Secretary of Transportation shall certify to the Secretary of the Treasury the total amount of the claims outstanding against the fund established by subsection (k) as of the effective date of this paragraph. The amount in such fund exceeding the total amount certified shall be transferred to the general fund of the Treasury. If the amount paid in settlement of such claims is less than the amount so certified, the remainder shall be transferred to the general fund of the Treasury. Any amounts received by the United States under section 311 with respect to such claims after the effective date of the repeal of subsection (k) shall be deposited in the general fund of the Treasury.

(10) Subsection (l) is amended by striking out the second sentence.

(11) Subsection (p) is repealed.

(12) Section 311 is amended by adding at the end thereof the following new subsection:

"(s) The Marine Oil Pollution Compensation Fund shall be available to carry out subsections (c), (d), (i), and (l) as those subsections relate to discharges of oil. Any amounts received by the United States under this section with respect to claims arising on or after the effective date of this subsection shall be deposited in the Marine Oil Pollution Compensation Fund.".

(d) DEEPWATER PORT ACT OF 1974.—The Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.; 88 Stat. 2126) is amended as follows:

(1) Section 4(c)(1) is amended by striking out "section 18(l) of this Act" and inserting in lieu thereof "section 405 of the Comprehensive Oil Pollution Liability and Compensation Act".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), and (n) of section 18 are repealed and subsections (c), (k), and (m) of section 18 are redesignated as subsections (b), (c), and (d), respectively.

(3) Paragraph (3) of subsection (b) of section 18 (as redesignated by paragraph (2)) is amended by striking out "Deepwater Port Liability Fund established pursuant to subsection (f) of this section." and inserting in lieu thereof "Marine Oil Pollution Compensation Fund.".

(4) Subsection (c) of section 18 (as redesignated by paragraph (2)) is amended to read as follows:

"(c) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil Pollution Liability and Compensation Act; for any discharge of oil from a deepwater port or a vessel within any safety zone.".

(5) Any amounts remaining in the Deepwater Port Liability Fund established by section 18(f) of the Deepwater Port Act of 1974 shall be deposited in the Marine Oil Pollution Compensation Fund. The Marine Oil Pollution Compensation Fund shall assume all liability incurred by the Deepwater Port Liability Fund under the Deepwater Port Act of 1974.

(e) OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978.—Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95–372) is repealed. Any amounts remaining in the Offshore Oil Pollution Compensation Fund established under section 302 of that title shall be deposited in the Marine Oil Pollution Compensation Fund established by subtitle B of this title. The Marine Oil Pollution Compensation Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund under title III of the Outer Continental Shelf Lands Act Amendments of 1978.

SEC. 443. REGULATIONS.

The Secretary of Transportation may prescribe regulations to carry out the functions of the Secretary of Transportation under this title.

SEC. 444. SEPARABILITY.

If any provision of this title or the applicability thereof is held invalid, the remainder of this title shall not be affected thereby.

Subtitle D—Implementation of Conventions

SEC. 461. RECOGNITION OF THE INTERNATIONAL FUND.

The International Oil Pollution Compensation Fund established by article 2 of the International Fund Convention is recognized under the laws of the United States as a legal person and shall have the capacity under the laws of the United States to contract, to acquire and dispose of real and personal property, and to institute and be a party to legal proceedings. The Director of the International Fund is recognized as the legal representative of the International Fund. The Director shall be deemed to have appointed irrevocably the Secretary of State his agent for service of process in any action against the International Fund in any court in the United States.

SEC. 462. SERVICE OF PROCESS AND INTERVENTION.

(a) SERVICE OF PROCESS ON FUNDS.—In any action brought in a court in the United States against the owner of a ship or his guarantor under the Civil Liability Convention, the plaintiff or defendant, as the case may be, shall serve a copy of the complaint and any subsequent pleading therein upon the International Fund and the Marine Oil Pollution

Compensation Fund at the same time the complaint or other pleading is served upon the opposing parties.

(b) INTERVENTION.—The International Fund may intervene as a party as a matter of right in any action brought in a court in the United States against the owner of a ship or his guarantor under the Civil Liability Convention.

(c) EFFECT OF JUDGMENT.—If the International Fund has been served a copy of the complaint and all subsequent pleadings in an action referred to in subsection (a), the International Fund shall be bound by any judgment entered therein, whether or not the International Fund was a party to the action.

SEC. 463. EXEMPTION FROM TAXATION.

The International Fund and its assets shall be exempt from all direct taxation in the United States.

SEC. 464. PAYMENT OF CONTRIBUTIONS.

(a) PAYMENTS TO BE MADE FROM MARINE OIL POLLUTION COMPENSATION FUND.—The amount of any contribution to the International Fund which is required to be made under article 10 of the International Fund Convention by any person with respect to oil received in any port, terminal installation, or other installation located in the United States shall be paid to the International Fund by the Secretary from the Marine Oil Pollution Compensation Fund. Before the International Fund Convention enters into force with respect to the United States, the President shall make, and deposit with the Secretary-General of the International Maritime Organization, a declaration under article 14 of the International Fund Convention that the United States assumes the obligation to pay contributions under article 10 of such Convention in respect of oil received within the territory of the United States and that such amount will be paid from the Marine Oil Pollution Compensation Fund.

(b) INFORMATION.—The Secretary shall, by regulation, require persons who are required to make contributions with respect to oil received in any port, terminal installation, or other installation in the United States under article 10 of the International Fund Convention to transmit to the Secretary such information relating to that oil as may be necessary to carry out subsection (a).

SEC. 465. JURISDICTION OF DISTRICT COURTS.

(a) JURISDICTION.—The United States district courts shall have exclusive original jurisdiction of all controversies arising under the Civil Liability Convention or the International Fund Convention in—

(1) the territory, including the territorial sea, of the United States, or

(2) the exclusive economic zone of the United States established by Proclamation Numbered 5030, dated March 10, 1983,

without regard to the citizenship of the parties or the amount in controversy.

(b) VENUE.—Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For purposes of this subsection, the International Fund shall reside in the District of Columbia.

SEC. 466. RECOGNITION OF JUDGMENTS.

Any final judgment of a court of any nation which is a party to the Civil Liability Convention or the International Fund Convention in an action for compensation under either such convention shall be recognized by any court of the United States or of a State when that judgment has become enforceable in such nation and is no longer subject to ordinary forms of review, except where—

(1) the judgment was obtained by fraud; or

(2) the defendant was not given reasonable notice and a fair opportunity to present his case.

SEC. 467. FINANCIAL RESPONSIBILITY.

(a) U.S. DOCUMENTED SHIPS.—The owner of each ship which is documented under the laws of the United States and is carrying more than two thousand tons of oil in bulk as cargo shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility in amounts sufficient to cover the maximum liability of such owner for pollution damage arising from one incident under the Civil Liability Convention. The Secretary shall issue a certificate to each such owner who complies with this paragraph, in the form and manner required by the Civil Liability Convention.

(b) U.S. OWNED SHIPS.—With respect to any ship owned by the United States, the Secretary shall issue a certificate stating that the ship is owned by the United States and that the ship's liability is covered within the limits of liability prescribed by the Civil Liability Convention.

(c) OTHER SHIPS.—The owner of each ship (other than a ship to which subsection (a) or (b) applies), wherever registered, which is carrying more than two thousand tons of oil in bulk as cargo and which enters or leaves a port or offshore terminal in the United States (including the territorial seas) shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility in amounts sufficient to cover the maximum liability of such owner for pollution damage arising from one incident under the Civil Liability Convention. The owner of a ship which is registered in, or flying the flag of, a nation which is a party to the Civil Liability Convention shall be considered to have met the requirements of this paragraph if the ship is carrying a certificate issued by such nation attesting that insurance or other financial security is in force which meets the requirements of such Convention.

(d) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any ship which does not have a certificate showing compliance with the requirements of financial responsibility under subsection (a) or (c).

(e) DENYING ENTRY AND DETAINING VESSELS.—The Secretary of the department in which the Coast Guard is operating may (1) deny entry to any facility, to any port or place in the United States, or to the navigable waters, or (2) detain at the facility or at the port or place in the United States, any vessel subject to this section that, upon request, does not produce the certificate required under this section or regulations issued hereunder.

SEC. 468. CIVIL PENALTY.

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 464(b) or 467, the regulations issued under either such section, or any denial or detention order under section 467(e) shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. The Secretary may compromise, modify, or remit with or without conditions any civil penalty which is subject to imposition or which has been imposed under this subsection. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

SEC. 469. WAIVER OF SOVEREIGN IMMUNITY.

The United States waives all defenses based on its status as a sovereign State with respect to any controversy arising under the Civil Liability Convention or the International Fund Convention relating to any ship owned by the United States and used for commercial purposes.

SEC. 470. RULES AND REGULATIONS.

The Secretary may issue such rules and regulations as are necessary to implement the Civil Liability Convention and the International Fund Convention.

SEC. 471. DEFINITIONS.

For purposes of this subtitle—

(1) terms defined in subtitle A have the same meanings when used in this subtitle;

(2) the term "Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1984;

(3) the term "International Fund" means the International Oil Pollution Compensation Fund established by article 2 of the International Fund Convention; and

(4) the term "International Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

TITLE V—AMENDMENTS OF THE INTERNAL REVENUE CODE OF 1954

SEC. 501. SHORT TITLE.

This title may be cited as the "Superfund Revenue Act of 1985".

PART I—SUPERFUND AND ITS REVENUE SOURCES

SEC. 511. EXTENSION OF ENVIRONMENTAL TAXES.

(a) IN GENERAL.—Subsection (d) of section 4611 of the Internal Revenue Code of 1954 (relating to termination) is amended to read as follows:

"(d) APPLICATION OF TAXES.—The taxes imposed by this section shall apply after October 31, 1985, and before October 1, 1990."

(b) TECHNICAL AMENDMENT.—Section 303 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on November 1, 1985.

SEC. 512. INCREASE IN TAX ON PETROLEUM.

(a) INCREASE IN TAX.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum) are each amended by striking out "0.79 cent" and inserting in lieu thereof "3.85 cents".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on November 1, 1985.

SEC. 513. INCREASE IN TAX ON CERTAIN CHEMICALS.

(a) INCREASE IN RATE OF TAX; LEAD ADDED AS TAXABLE CHEMICAL.—Subsection (b) of section 4661 of the Internal Revenue Code of 1954 (relating to amount of tax imposed on certain chemicals) is amended by striking out the table contained in such subsection and inserting in lieu thereof the following:

"In the case of:	The tax (before any inflation adjustment) is the following amount per ton:
Organic substances	
Acetylene	$4.74
Benzene	4.74
Butadiene	4.74
Butane	4.74
Butylene	4.74
Ethylene	4.47
Methane	3.35

Napthalene	4.74
Propylene	4.74
Toluene	4.74
Xylene	9.68
Inorganic substances	
Ammonia	3.52
Antimony	4.33
Antimony trioxide	4.13
Arsenic	4.33
Arsenic trioxide	3.92
Barium sulfide	3.49
Bromine	4.33
Cadmium	4.33
Chlorine	3.40
Chromite	1.48
Chromium	4.33
Cobalt	4.33
Cupric oxide	4.00
Cupric sulfate	3.32
Cuprous oxide	4.15
Hydrochloric acid	0.83
Hydrogen fluoride	4.25
Lead	2.47
Lead Oxide	4.21
Mercury	4.33
Nickel	4.33
Nitric acid	2.36
Phosphorous	4.33
Potassium dichromate	3.25
Potassium hydroxide	2.67
Sodium dichromate	3.32
Sodium hydroxide	2.27
Stannic chloride	3.42
Stannous chloride	3.70
Sulfuric acid	0.70
Zinc chloride	3.46
Zinc sulfate	3.33."

(b) INFLATION ADJUSTMENTS IN AMOUNT OF TAX.—Section 4661 of such Code is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) INFLATION ADJUSTMENTS IN AMOUNT OF TAX.—

"(1) IN GENERAL.—In the case of any taxable chemical sold in a calendar year after 1986, the amount of the tax imposed by subsection (a) shall be the amount determined under subsection (b) increased by the applicable inflation adjustment for such calendar year.

"(2) APPLICABLE INFLATION ADJUSTMENT.—

"(A) IN GENERAL.—In the case of a taxable chemical, the applicable inflation adjustment for the calendar year is the percentage (if any) by which—

"(i) the applicable price index for the preceding calendar year, exceeds

"(ii) the applicable price index for 1985.

"(B) APPLICABLE PRICE INDEX.—For purposes of subparagraph (A), the applicable price index for any calendar year is the average for the months in the 12-month period ending on September 30 of such calendar year of—

"(i) in the case of organic substances, the producer price index for basic organic chemicals as published by the Secretary of Labor, or

"(ii) in the case of inorganic substances, the producer price index for basic inorganic chemicals as published by the Secretary of Labor.

"(3) **Rounding.**—If any increase determined under paragraph (1) is not a multiple of 1 cent, such increase shall be rounded to the nearest multiple of 1 cent (or, if the increase determined under paragraph (1) is a multiple of ½ of 1 cent, such increase shall be increased to the next higher multiple of 1 cent)."

(c) **Exemption for Exports of Taxable Chemicals.**—

(1) Section 4662 of such Code (relating to definitions and special rules) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) **Exemption for Exports of Taxable Chemicals.**—

"(1) **Tax-free sales.**—

"(A) **In general.**—No tax shall be imposed under section 4661 on the sale by the manufacturer or producer of any taxable chemical for export, or for resale by the purchaser to a second purchaser for export.

"(B) **Proof of export required.**—Rules similar to the rules of section 4221(b) shall apply for purposes of subparagraph (A).

"(2) **Credit or refund where tax paid.**—

"(A) In general.—Except as provided in subparagraph (B), if—

"(i) tax under section 4661 was paid with respect to any taxable chemical, and

"(ii) such chemical was exported by any person,

credit or refund (without interest) of such tax shall be allowed or made to the person who paid such tax.

"(B) Condition to allowance.—No credit or refund shall be allowed or made under subparagraph (A) unless the person who paid the tax establishes that he—

"(i) has repaid or agreed to repay the amount of the tax to the person who exported the taxable chemical, or

"(ii) has obtained the written consent of such exporter to the allowance of the credit or the making of the refund.

"(3) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection."

(2) Paragraph (1) of section 4662(d) of such Code (relating to refund or credit for certain uses) is amended—

(A) by striking out "the sale of which by such person would be taxable under such section" and inserting in lieu thereof "which is a taxable chemical", and

(B) by striking out "imposed by such section on the other substance manufactured or produced" and inserting in lieu thereof "imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (b) or (e) of this section)".

(d) SPECIAL RULES FOR CERTAIN CHEMICALS.—

(1) REPEAL OF EXEMPTION FOR CHEMICALS DERIVED FROM COAL.—

(A) Section 4662(b) of such Code (relating to exemptions; other special rules) is amended by striking out paragraph (4) and by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(B) Paragraph (3) of section 4662(d) of such Code is amended by striking out "subsection (b)(5)" each place it appears and inserting in lieu thereof "subsection (b)(4)".

(2) EXEMPTION FOR LEAD HAVING TRANSITORY PRESENCE DURING EXTRACTING PROCESS.—Clause (i)

of section 4662(b)(5)(B) of such Code (relating to substance having transitory presence during extracting process), as redesignated by paragraph (1), is amended by inserting "lead," before "lead oxide".

(3) SPECIAL RULE FOR XYLENE.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (5) the following new paragraph:

"(6) SPECIAL RULE FOR XYLENE.—Except in the case of any substance imported into the United States or exported from the United States, the term 'xylene' does not include any separated isomer of xylene."

(4) SPECIAL RULE FOR NITRIC ACID USED IN PRODUCTION OF NITROCELLULOSE.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (6) the following new paragraph:

"(7) SPECIAL RULE FOR NITRIC ACID USED IN PRODUCTION OF NITROCELLULOSE.—The tax imposed under section 4661 on nitric acid used by the producer of such acid in the production of nitrocellulose shall not exceed $0.24 per ton."

(e) EXEMPTION FOR CERTAIN RECYCLED CHEMICALS.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (7) the following new paragraph:

"(8) RECYCLED CHROMIUM, COBALT, NICKEL, AND LEAD.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any chromium, cobalt, nickel, or lead which is diverted or recovered in the United States from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process).

"(B) EXEMPTION NOT TO APPLY WHILE CORRECTIVE ACTION UNCOMPLETED.—Subparagraph (A) shall not apply during any period that required corrective action by the taxpayer is uncompleted.

"(C) REQUIRED CORRECTIVE ACTION.—For purposes of subparagraph (B), required corrective action shall be treated as uncompleted during the period—

"(i) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to—

"(I) a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, or

"(II) a final order under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

"(ii) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

"(D) SOLID WASTE.—For purposes of this paragraph, the term 'solid waste' has the meaning given such term by section 1004 of the Solid Waste Disposal Act, except that such term shall not include any byproduct, coproduct, or other waste from any process of smelting, refining, or otherwise extracting any metal."

(f) EXEMPTION FOR ANIMAL FEED SUBSTANCES.—

(1) IN GENERAL.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (8) the following new paragraph:

"(9) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—

"(A) IN GENERAL.—In the case of—

"(i) nitric acid,

"(ii) sulfuric acid,

"(iii) ammonia, or

"(iv) methane used to produce ammonia,

which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term 'qualified animal feed substance' means any substance—

"(i) used in a qualified animal feed use by the manufacturer, producer, or importer,

"(ii) sold for use by any purchaser in a qualified animal feed use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

"(C) QUALIFIED ANIMAL FEED USE.—The term 'qualified animal feed use' means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

"(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical."

(2) REFUND OR CREDIT FOR SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—Subsection (d) of section 4662 of such Code (relating to refunds and credits with respect to the tax on certain chemicals) is amended by adding at the end thereof the following new paragraph:

"(4) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(9), and

"(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(9) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section."

(g) Certain Exchanges by Taxpayers Not Treated as Sales.—Subsection (c) of section 4662 of such Code (relating to use by manufacturers) is amended to read as follows:

"(c) Use and Certain Exchanges by Manufacturer, Etc.—

"(1) Use treated as sale.—Except as provided in subsections (b) and (e), if any person manufactures, produces, or imports any taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

"(2) Special rules for inventory exchanges.—

"(A) In general.—Except as provided in this paragraph, in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of an inventory exchange with another person—

"(i) such exchange shall not be treated as a sale, and

"(ii) such other person shall, for purposes of section 4661, be treated as the manufacturer, producer, or importer of such chemical.

"(B) REGISTRATION REQUIREMENT.—Subparagraph (A) shall not apply to any inventory exchange unless—

"(i) both parties are registered with the Secretary as manufacturers, producers, or importers of taxable chemicals, and

"(ii) the person receiving the taxable chemical has, at such time as the Secretary may prescribe, notified the manufacturer, producer, or importer of such person's registration number and the internal revenue district in which such person is registered.

"(C) INVENTORY EXCHANGE.—For purposes of this paragraph, the term 'inventory exchange' means any exchange in which 2 persons exchange property which is, in the hands of each person, property described in section 1221(1)."

(h) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on November 1, 1985.

(2) REPEAL OF TAX ON XYLENE FOR PERIODS BEFORE OCTOBER 1, 1985.—

(A) REFUND OF TAX PREVIOUSLY IMPOSED.—In the case of any tax imposed by section 4661 of the Internal Revenue Code of 1954 on the sale or use of xylene before October 1, 1985, such tax (including interest, additions to tax, and additional amounts) shall not be assessed, and if assessed, the assessment shall be abated, and if collected shall be credited or refunded (with interest) as an overpayment.

(B) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of subparagraph (A) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

(C) XYLENE TO INCLUDE ISOMERS.—For purposes of this paragraph, the term "xylene" shall include any isomer of xylene whether or not separated.

(3) INVENTORY EXCHANGES.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by subsection (g) shall apply as if included in the amendments made by section 211 of the Hazardous Substance Response Revenue Act of 1980.

(B) RECIPIENT MUST AGREE TO TREATMENT AS MANUFACTURER.—In the case of any inventory exchange before January 1, 1986, the amendment made by subsection (g) shall apply only if the person receiving the chemical from the manufacturer, producer, or importer in the exchange agrees to be treated as the manufacturer, producer, or importer of such chemical for purposes of subchapter B of chapter 38 of the Internal Revenue Code of 1954.

(C) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any inventory exchange before January 1, 1986, the amendment made by subsection (g) shall not apply if the manufacturer, producer, or importer treated such exchange as a sale for purposes of section 4661 of such Code and paid the tax imposed by such section.

(D) REGISTRATION REQUIREMENTS.—Section 4662(c)(2)(B) of such Code (as added by subsection (g)) shall apply to exchanges made after December 31, 1985.

SEC. 514. REPEAL OF POST-CLOSURE TAX AND TRUST FUND.

(a) REPEAL OF TAX.—

(1) Subchapter C of chapter 38 of the Internal Revenue Code of 1954 (relating to tax on hazardous wastes) is hereby repealed.

(2) The table of subchapters for such chapter 38 is amended by striking out the item relating to subchapter C.

(b) REPEAL OF TRUST FUND.—Section 232 of the Hazardous Substance Response Revenue Act of 1980 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1983.

SEC. 515. WASTE MANAGEMENT TAX.

(a) GENERAL RULE.—Chapter 38 of the Internal Revenue Code of 1954 (as amended by section 514 of this Act) is amended by adding after subchapter B the following new subchapter:

"Subchapter C—Hazardous Waste Management Tax

"Sec. 4671. Waste management tax.
"Sec. 4672. Exemptions; reduction of tax where prior taxable event.
"Sec. 4673. Special rules for waste water treatment, incineration, etc.
"Sec. 4674. Backup tax on generator.
"Sec. 4675. Definitions and special rules.

“SEC. 4671. WASTE MANAGEMENT TAX.

“(a) Imposition of Tax.—There is hereby imposed a tax on—

“(1) the receipt of hazardous waste at a qualified hazardous waste management unit,

“(2) the receipt of hazardous waste for transport from the United States for the purpose of ocean disposal, and

“(3) the exportation of hazardous waste from the United States.

“(b) Amount of Tax.—

“(1) In general.—The amount of the tax imposed by subsection (a) with respect to each ton of hazardous waste shall be determined in accordance with the following table:

	If the taxable event is:	
	Land disposal	Any other taxable event
“For calendar year:	The tax per ton is:	
1986	$27.00	$2.70
1987	30.00	3.00
1988	31.00	3.00
1989	36.00	3.00
1990	43.00	3.00.

“(2) Definitions relating to amount of tax.—For definition of—

“(A) hazardous waste, see section 4675(a)(1), and

"(B) land disposal and any other taxable event, see section 4675(a)(5).

"(c) LIABILITY FOR TAX.—

"(1) WASTE RECEIVED AT MANAGEMENT UNITS.—The tax imposed by subsection (a)(1) shall be paid by the owner or operator of the qualified hazardous waste management unit.

"(2) WASTE RECEIVED FOR TRANSPORT FROM THE UNITED STATES.—The tax imposed by subsection (a)(2) shall be paid by the person holding the permit issued for transport for ocean disposal under section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972.

"(3) WASTE EXPORTED.—The tax imposed by subsection (a)(3) shall be paid by the exporter.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1990.

"SEC. 4672. EXEMPTIONS; REDUCTION OF TAX WHERE PRIOR TAXABLE EVENT.

"(a) EXEMPTION FOR CERTAIN REMOVAL AND REMEDIAL ACTIONS, ETC.—The tax imposed by section 4671 shall not apply to the receipt or export of hazardous waste pursuant to—

"(1) a corrective action specified in—

"(A) an initial or final order, or

"(B) a proposed or final permit,

issued by the Administrator under the Solid Waste Disposal Act or a State under a hazardous waste program authorized under section 3006 of such Act,

"(2) a proposed or final closure plan approved by the Administrator or such a State,

"(3) a removal or remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 which has been selected or approved by the Administrator, or

"(4) an action to correct an emergency situation arising from a product spill which is certified by the Administrator to the Secretary as carrying out the purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

"(b) EXEMPTION FOR WASTE RECEIVED AT ANY FEDERAL FACILITY.—The tax imposed by section 4671 shall not apply to any hazardous waste received at any facility owned by the United States.

"(c) REDUCTION IN TAX WHERE PRIOR TAXABLE EVENT.—

"(1) IN GENERAL.—If—

"(A) tax under section 4671 or 4674 was paid with respect to any hazardous waste, and

"(B) tax under section 4671 is subsequently imposed on such waste (hereinafter in this subsection referred to as the 'later taxable event'),

then the tax under section 4671 on the later taxable event shall be reduced by the amount determined under paragraph (2).

"(2) AMOUNT OF REDUCTION.—The amount of the reduction determined under this paragraph is the product of—

"(A) the weight of hazardous waste involved in the later taxable event, multiplied by

"(B) the lesser of—

"(i) the highest rate of tax paid under section 4671 or 4674 with respect to any prior taxable event involving such waste (determined without regard to this subsection), or

"(ii) the rate of tax imposed by section 4671 with respect to the later taxable event (as so determined).

"SEC. 4673. SPECIAL RULES FOR WASTE WATER TREATMENT, INCINERATION, ETC.

"(a) EXEMPTION FOR WASTE RECEIVED AT CERTAIN WASTE WATER TREATMENT UNITS.—The tax imposed by section 4671 shall not apply to hazardous waste received at any waste water treatment unit.

"(b) INCINERATION, ETC. WITHIN 90 DAYS OF RECEIPT.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—

"(A) tax under section 4671 was paid with respect to the receipt of any hazardous waste at any qualified hazardous waste management unit or for transport described in section 4671(a)(2), and

"(B) such waste is incinerated on land (or the equivalent of incineration on land) by any person within 90 days after the date of the first receipt referred to in subparagraph (A),

then the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4671.

"(2) EQUIVALENT OF INCINERATION.—For purposes of subparagraph (A), a method, technique, or process shall be treated as the equivalent of incineration on land if—

"(A) such method, technique, or process meets detailed performance standards established by the Environmental Protection Agency, and

"(B) such standards require a destruction and removal efficiency for the hazardous waste involved at least equivalent to the destruction and removal efficiency applicable to incineration on land.

"(c) QUALIFIED CHEMICAL FUELS OR SOLVENTS.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—

"(A) tax under section 4671 was paid with respect to any hazardous waste,

"(B) such waste is used by any person in the production of any qualified chemical fuel or solvent, and

"(C) such fuel or solvent is by such person sold for use or used in any industrial or commercial use,

then the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4671.

"(2) QUALIFIED CHEMICAL FUEL OR SOLVENT.—For purposes of subparagraph (A), the term 'qualified chemical fuel or solvent' means any chemical or solvent which is determined by the Administrator as not being a hazardous waste.

"(d) RECYCLING OF BATTERIES.—Under regulations prescribed by the Secretary, if—

"(1) tax under section 4671 was paid with respect to the receipt of any battery at a qualified hazardous waste management unit, and

"(2) the recycling of such battery begins at such a unit by any person within 90 days after the date of the first receipt of such battery at any qualified hazardous waste management unit,

then the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4671.

"(e) TAX TO APPLY WHILE CORRECTIVE ACTION NOT COMPLETED.—

"(1) IN GENERAL.—The exemption provided by subsection (a) shall not apply (and no credit or refund shall be allowed under this section) with respect to any activity conducted at a facility (or part thereof) during the period that required corrective action remains uncompleted with respect to such facility (or part).

"(2) REQUIRED CORRECTIVE ACTION.—For purposes of paragraph (1), required corrective action shall be treated as uncompleted during the period—

"(A) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, and

"(B) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

"(3) RATE OF TAX WITH RESPECT TO WASTE WATER TREATMENT.—The rate of tax imposed by section 4671 by reason of this subsection with respect to hazardous waste received at any waste water treatment unit shall be 15 cents per ton.

"SEC. 4674. BACKUP TAX ON GENERATOR.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on each ton of hazardous waste which, as of the close of the 270-day period beginning on the day after the day on which such waste was generated, has not been—

"(1) received at a qualified hazardous waste management unit, "(2) received for transport from the United States for the purpose of ocean disposal, or

"(3) exported from the United States.

"(b) RATE OF TAX.—The rate of the tax imposed by subsection (a) shall be the rate of tax applicable to land disposal under section 4671 at the end of the 270-day period described in subsection (a).

"(c) LIABILITY FOR TAX.—The tax imposed by subsection (a) shall be paid by the generator of the hazardous waste.

"(d) EXEMPTIONS.—

"(1) SMALL GENERATORS.—The tax imposed by subsection (a) shall not apply to hazardous waste generated during any month if the generator of such waste does not generate more than 100 kilograms of hazardous waste during such month.

"(2) WASTE LEGALLY DISPOSED OF IN PUBLICLY OWNED TREATMENT WORKS.—The tax imposed by subsection (a) shall not apply to hazardous waste disposed of in any publicly owned treatment works if the disposal of such waste is not in violation of Federal, State, or local law.

"(3) OTHER EXEMPTIONS TO APPLY.—The exemptions provided by subsections (a) and (b) of section 4672 shall apply to the tax imposed by subsection (a).

"(4) Exemptions under regulations; application of lower rate.—The Secretary may prescribe regulations which provide exemptions from the tax imposed by subsection (a) (or the application of a lower rate) which are not inconsistent with the purposes of this section.

"(e) Generator.—For purposes of this section, the term 'generator' means the person whose act or process produces the hazardous waste.

"(f) Termination.—No tax shall be imposed by this section on waste generated after September 30, 1990.

"SEC. 4675. DEFINITIONS AND SPECIAL RULES.

"(a) Definitions.—For purposes of this subchapter—

"(1) Hazardous waste.—The term 'hazardous waste' means any waste which is listed or identified as of the date of the enactment of the Superfund Revenue Act of 1985 under section 3001 of the Solid Waste Disposal Act. Rainwater shall not be treated as hazardous waste unless mixed with hazardous waste (as defined in the preceding sentence).

"(2) Qualified hazardous waste management unit.—The term 'qualified hazardous waste management unit' means the specified area of land or structure—

"(A) which isolates the hazardous wastes within a qualified hazardous waste facility, and

"(B) which is subject to the requirements for obtaining interim status or a final permit under subtitle C of the Solid Waste Disposal Act.

"(3) Qualified hazardous waste management facility.—The term 'qualified hazardous waste management facility' means any facility, as defined under subtitle C of the Solid Waste Disposal Act, which has received a permit or is accorded interim status under—

"(A) section 3005 of the Solid Waste Disposal Act, or

"(B) a State program authorized under section 3006 of such Act.

"(4) Ocean disposal.—The term 'ocean disposal' means the incineration or dumping of hazardous waste over or into ocean waters or the waters described in section 101(b) of the Marine Protection, Research, and Sanctuaries Act of 1972, pursuant to section 102 of such Act.

"(5) Definitions relating to amount of tax.—

"(A) Land disposal.—The term 'land disposal' means a taxable event described in section

4671(a)(1) with respect to a qualified hazardous waste management unit which is a landfill, surface impoundment, waste pile, or land treatment unit.

"(B) LANDFILL, ETC.—For purposes of subparagraph (A), the terms 'landfill', 'surface impoundment', 'waste pile' and 'land treatment unit' have the respective meanings given such terms in regulations prescribed by the Administrator pursuant to sections 3004 and 3005 of the Solid Waste Disposal Act.

"(C) OTHER TAXABLE EVENT.—The term 'any other taxable event' means—

"(i) a taxable event described in section 4671(a)(1) which is not land disposal, and

"(ii) a taxable event described in paragraph (2) or (3) of section 4671(a).

"(6) WASTE WATER TREATMENT UNIT.—The term 'waste water treatment unit' means any qualified hazardous waste management unit which is an integral and necessary part of a treatment system—

"(A) for which a permit is required under section 402 of the Clean Water Act, "(B) which is subject to pretreatment standards under subsection (b) or (c) of section 307 of the Clean Water Act, or

"(C) which is a zero discharge treatment system—

"(i) which, if the system discharged into navigable waters, would comply with effluent limitation guidelines prescribed under paragraph (2) or (4) of section 304(b) of the Clean Water Act,

"(ii) which, if the system discharged into a publicly owned treatment works, would comply with the pretreatment standards described in subparagraph (B), or

"(iii) if no such guidelines or standards have been prescribed, which employs biological treatment.

The term 'waste water treatment unit' shall not include any qualified hazardous waste management unit which receives for storage or final disposition concentrated treatment residues resulting from wastewater treatment.

"(7) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(8) UNITED STATES.—The term 'United States' has the meaning given such term by section 4612(a)(4).

"(9) TON.—The term 'ton' means 2,000 pounds.

"(10) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by this subchapter shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) TREATMENT OF CONTAINERS, ETC. WHICH ARE RELATED TO INJECTION UNITS.—For purposes of this subchapter—

"(1) any container, tank, or surface impoundment which, with respect to any hazardous waste, is used to treat or store such waste before underground injection of such waste (whether or not the waste when injected is hazardous waste) into an injection well, and

"(2) the injection well into which such waste is injected,

shall be treated as a single hazardous waste management unit.

"(c) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsection (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by this subchapter."

(b) INFORMATION REPORTING REQUIREMENT.—

(1) In general.—Subpart A of part III of subchapter A of chapter 61 of such Code is amended by inserting after section 6039D the following new section:

"SEC. 6039E. INFORMATION WITH RESPECT TO MANAGEMENT TAX ON HAZARDOUS WASTE.

"Each person on whom a tax is imposed under subchapter C of chapter 38 shall (at such time and in such manner as the Secretary may require) submit to the Secretary such information as the Secretary may require, including information which such person is required to provide the Administrator of the Environmental Protection Agency under the Solid Waste Disposal Act. To the extent provided in regulations prescribed by the Secretary, the preceding sentence shall also apply to persons not described therein with respect to information which the Secretary determines is necessary or appropriate to the administration of such subchapter."

(2) Penalty.—Subchapter B of chapter 68 of such Code (relating to assessable penalties) is amended by redesignating section 6708 (relating to mortgage credit certificates) as section 6709 and by adding at the end thereof the following new section:

"SEC. 6710. FAILURE TO PROVIDE INFORMATION WITH RESPECT TO MANAGEMENT TAX ON HAZARDOUS WASTE.

"(a) IN GENERAL.—Any person who fails to meet any requirement imposed by section 6039E shall pay a penalty of $100 for each day during which such failure continues, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection with respect to any failure shall not exceed $50,000.

"(b) PENALTY IN ADDITION TO OTHER PENALTIES.—The penalty imposed by this section shall be in addition to any other penalty provided by law."

(3) CONFORMING AMENDMENTS.—

(A) The table of sections for subpart A of part III of subchapter A of chapter 61 of such Code is amended by inserting after the item relating to section 6039D the following new item:

"Sec. 6039E. Information with respect to management tax on hazardous waste."

(B) The table of sections for subchapter B of chapter 68 of such Code is amended by redesignating the item relating to mortgage credit certificates as section 6709 and by adding at the end thereof the following new item:

"Sec. 6710. Failure to provide information with respect to management tax on hazardous waste."

(c) PENALTY FOR NEGLIGENCE TO APPLY TO ENVIRONMENTAL TAXES.—Section 6653 of such Code (relating to failure to pay tax) is amended by adding at the end thereof the following new subsection:

"(i) NEGLIGENCE PENALTY TO APPLY TO ENVIRONMENTAL TAXES.—For purposes of applying paragraphs (1) and (2) of subsection (a), paragraph (1) of subsection (a) shall be treated as including a reference to underpayments (as defined in subsection (c)) of tax imposed by chapter 38 (relating to environmental taxes)."

(d) CLERICAL AMENDMENT.—The table of subchapters for chapter 38 of such Code is amended by adding after the item relating to subchapter B the following new item:

"Subchapter C. Hazardous waste management tax."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1986.

(2) BACKUP TAX ON GENERATOR.—Section 4674 of the Internal Revenue Code of 1954 (relating to backup tax on generator), as added by this section, shall apply to waste generated after December 31, 1986.

SEC. 516. TAX ON CERTAIN IMPORTED SUBSTANCES DERIVED FROM TAXABLE CHEMICALS.

(a) GENERAL RULE.—Chapter 38 of the Internal Revenue Code of 1954 is amended by adding after subchapter C the following new subchapter:

"Subchapter D—Tax on Certain Imported Substances

"Sec. 4677. Imposition of tax.
"Sec. 4678. Definitions and special rules.

"SEC. 4677. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable substance sold or used by the importer thereof.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amount of the tax imposed by subsection (a) with respect to any taxable substance shall be the amount of the tax which would have been imposed by section 4661 on the taxable chemicals or petroleum used as materials or process fuel in the manufacture or production of such substance if such taxable chemicals or petroleum had been sold in the United States for use in the manufacture or production of such taxable substance.

"(2) RATE WHERE IMPORTER DOES NOT FURNISH INFORMATION TO SECRETARY.—If the importer does not furnish to the Secretary (at such time and in such manner as the Secretary shall prescribe) sufficient information to determine under paragraph (1) the amount of the tax imposed by subsection (a) on any taxable substance, the amount of the tax imposed on such taxable substance shall be 5 percent of the appraised value of such substance as of the time such substance was entered into the United States for consumption, use, or warehousing.

"(c) EXEMPTIONS FOR SUBSTANCES TAXED UNDER SECTIONS 4611 AND 4661.—No tax shall be imposed by this section on the sale or use of any substance if tax is imposed on such sale or use under section 4611 or 4661.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1990.

"SEC. 4678. DEFINITIONS AND SPECIAL RULES.

"(a) TAXABLE SUBSTANCE.—For purposes of this subchapter—

"(1) IN GENERAL.—The term 'taxable substance' means any substance which, at the time of sale or use by the importer, is listed as a taxable substance by the Secretary for purposes of this subchapter.

"(2) DETERMINATION OF SUBSTANCES ON LIST.—A substance shall be listed under paragraph (1) if the Secretary determines, in consultation with the

Administrator of the Environmental Protection Agency and the Commissioner of Customs, that such substance generally has more than 50 percent of its value derived (as materials or as process fuel) from taxable chemicals or petroleum (determined on the basis of the predominant method of production).

"(3) MODIFICATIONS TO LIST.—The Secretary may add or remove substances from the list under paragraph (2) as necessary to carry out the purposes of this subchapter.

"(b) OTHER DEFINITIONS.—For purposes of this subchapter—

"(1) IMPORTER.—The term 'importer' means the person entering the taxable substance for consumption, use, or warehousing.

"(2) TAXABLE CHEMICALS; UNITED STATES.—The terms 'taxable chemical' and 'United States' have the respective meanings given such terms by section 4662(a).

"(c) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4677."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 38 of such Code is amended by adding after the item relating to subchapter C the following new item:

"Subchapter D. Tax on certain imported substances."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 517. IMPOSITION OF SUPERFUND EXCISE TAX.

(a) IN GENERAL.—Chapter 38 of the Internal Revenue Code of 1954 is amended by adding after subchapter D the following new subchapter:

"Subchapter E—Superfund Excise Tax

"Part I. Imposition of tax.
"Part II. Taxable transaction.
"Part III. Taxable amount; exempt transactions; credit against tax.
"Part IV. Administration.
"Part V. Definitions; special rules.

"PART I—IMPOSITION OF TAX

"Sec. 4681. Imposition of tax.
"Sec. 4682. Termination.

"SEC. 4681. IMPOSITION OF TAX.

"(a) GENERAL RULE.—A tax is hereby imposed on each taxable transaction.

"(b) AMOUNT OF TAX.—Except as otherwise provided in this subchapter, the amount of the tax shall be .08 percent of the taxable amount.

"SEC. 4682. TERMINATION.

"(a) IN GENERAL.—No tax shall be imposed under section 4681 after December 31, 1990.

"(b) TERMINATION IF $10,000,000,000 OF SUPERFUND TAXES COLLECTED.—

"(1) ESTIMATES BY THE SECRETARY.—The Secretary as of the close of each calendar quarter shall make an estimate of the aggregate amount appropriated or credited to the Hazardous Substance Superfund (other than by reason of paragraphs (3), (4), and (5) of section 9505(b)) during the period beginning on November 1, 1985, and ending on September 30, 1990.

"(2) TERMINATION IF $10,000,000,000 CREDITED BEFORE SEPTEMBER 30, 1990.—If the Secretary estimates under paragraph (1) that more than $10,000,000,000 of the amount referred to in paragraph (1) will be credited to the Fund as of the close of any calendar quarter before September 30, 1990, no tax shall be imposed under section 4681 after such quarter.

"(c) PROCEDURES FOR TERMINATION.—

"(1) PRORATION OVER TAXABLE PERIOD.—In the case of any taxable period which begins before and ends after the termination date determined under subsection (a) or (b), the tax imposed by section 4681 on taxable transactions described in paragraph (1) of section 4683(a) (and the credit allowable under section 4687) for such taxable period shall be equal to an amount which bears the same ratio to the amount of such tax (and credit) for such taxable period (determined without regard to the termination) as—

"(A) the number of days in such taxable period up to and including the date of termination, bears to

"(B) the number of days in such taxable period.

"(2) TAX ON IMPORTS.—The tax imposed by section 4681 on taxable transactions described in paragraph (2) of section 4683(a) shall not apply to property imported after the termination date determined under subsection (a) or (b).

"(3) OTHER PROCEDURES.—The Secretary shall by regulation provide such procedures for a termination under this section as the Secretary determines necessary.

"PART II—TAXABLE TRANSACTION

"Sec. 4683. Taxable transaction.
"Sec. 4684. Taxable person.

"SEC. 4683. TAXABLE TRANSACTION.

"(a) IN GENERAL.—For purposes of this subchapter except as otherwise provided in this subchapter, the term 'taxable transaction' means—

"(1) the sale or leasing of tangible personal property by a taxable person in connection with a trade or business, or

"(2) the importing of tangible personal property into the United States by a taxable person.

"(b) EXEMPT TRANSACTIONS.—

"For exempt transactions, see section 4686.

"SEC. 4684. TAXABLE PERSON.

"(a) GENERAL RULE.—Except as otherwise provided in this subchapter, for purposes of this subchapter, the term 'taxable person' means—

"(1) in the case of a taxable transaction described in paragraph (1) of section 4683(a)—

"(A) the manufacturer of the tangible personal property, or

"(B) any person who included the costs of the tangible personal property in such person's qualified inventory costs, and

"(2) in the case of a taxable transaction described in paragraph (2) of section 4683(a), the importer of the tangible personal property.

"(b) GOVERNMENT ENTITIES AND EXEMPT ORGANIZATIONS NOT TAXABLE PERSONS.—For purposes of this subchapter, the term 'taxable person' shall not include—

"(1) the United States, any State or political subdivision thereof, the District of Columbia, a Commonwealth or possession of the United States, or any agency or instrumentality of the foregoing, and

"(2) any organization which is exempt from taxation under chapter 1 by reason of section 501(a); except that this paragraph shall not apply with respect to any transaction which is part of an unrelated trade or business (within the meaning of section 513) of such organization.

"PART II—TAXABLE AMOUNT; EXEMPT TRANSACTIONS; CREDIT AGAINST TAX

"Sec. 4685. Taxable amount.
"Sec. 4686. Exempt transactions.
"Sec. 4687. Credit against tax on sales and leases.

"SEC. 4685. TAXABLE AMOUNT.

"(a) SALE.—For purposes of this subchapter, the taxable amount for any sale shall be the price (in money or fair market value of other consideration) charged the purchaser of the property by the seller thereof—

"(1) including items payable to the seller with respect to such transaction, but

"(2) excluding the tax imposed by section 4681 or chapter 32 with respect to such transaction.

"(b) IMPORTS.—For purposes of this subchapter, the taxable amount in the case of any import shall be the sum of—

"(1) the customs value, plus

"(2) customs duties and any other duties which may be imposed.

If there is no such customs value, fair market value (determined in a manner similar to the determination of customs value) shall be substituted for customs value in paragraph (1).

"(c) LEASES.—For purposes of this subchapter, the taxable amount in the case of any lease shall be the gross payments under the lease.

"(d) CONTAINERS, PACKING, AND TRANSPORTATION CHARGES; CONSTRUCTIVE SALES PRICE.—Under regulations, rules similar to the rules of subsections (a) and (b) of section 4216 (relating to containers, packing, and transportation charges, etc., and constructive sales price) shall apply in computing the taxable amount.

"(e) SPECIAL RULE WHERE SALE OR LEASE PAYMENTS RECEIVED IN MORE THAN 1 TAXABLE PERIOD.—

"(1) SALES.—In the case of a sale of any tangible personal property where the consideration is received by the seller in more than 1 taxable period—

"(A) in the case of the seller, the taxable amount for each such taxable period shall be the portion of the taxable amount received during such period, and

"(B) in the case of the buyer, the cost of such property shall be taken into account for purposes of determining qualified inventory costs only when paid.

"(2) LEASES.—In the case of a lease with a term which includes more than 1 taxable period, the taxable amount for each taxable period shall include the gross lease payments received by the taxable person during such taxable period.

"SEC. 4686. EXEMPT TRANSACTIONS.

"(a) IMPORTS OF $10,000 OR LESS.—No tax shall be imposed under section 4681 on any tangible personal property imported into the United States as part of a shipment (within the meaning of section 498(a)(1) of the Tariff Act of 1930; 19 U.S.C. 1498(a)(1)) the aggregate taxable amount of which is $10,000 or less.

"(b) EXPORTS.—Under regulations, no tax shall be imposed under section 4681 on the sale of any property which is to be exported from the United States.

"(c) CERTAIN EXEMPT PRODUCTS.—

"(1) IN GENERAL.—In the case of any exempt product—

"(A) no tax shall be imposed by section 4681 with respect to such product, and

"(B) any qualified inventory costs allocable to such product shall not be taken into account under section 4687.

"(2) **Exempt product.**—For purposes of this section—

"(A) **In general.**—The term 'exempt product' means—

"(i) any food product,

"(ii) any unprocessed agricultural or fishery product,

"(iii) any unprocessed timber, and

"(iv) any fertilizer product.

"(B) **Food product.**—The term 'food product' means—

"(i) any food or nonalcoholic drink for humans or animals, and

"(ii) any material, component, or packaging of such a food or drink.

"(C) **Fertilizer product.**—The term 'fertilizer product' means—

"(i) any product to be used as a fertilizer, and

"(ii) any material, component, or packaging of such a product.

"SEC. 4687. CREDIT AGAINST TAX ON SALES AND LEASES.

"(a) **General Rule.**—There shall be allowed as a credit against the tax imposed by section 4681 for any taxable period on taxable transactions described in paragraph (1) of section 4683(a) an amount equal to the greater of—

"(1) .08 percent of the qualified inventory costs of the taxable person for the taxable period, or

"(2) $8,000.

"(b) LIMITATION BASED ON TAX LIABILITY; CARRYFORWARD OF EXCESS CREDIT.—

"(1) LIMITATION BASED ON AMOUNT OF TAX.—The amount of the credit allowed by subsection (a) for any taxable period shall not exceed the liability for tax imposed by section 4681 on taxable transactions described in paragraph (1) of section 4683(a) for such period.

"(2) CARRYFORWARD OF EXCESS CREDIT.—If the credit allowable under subsection (a)(1) for any taxable period exceeds the limitation imposed by paragraph (1), such credit shall be carried to the succeeding taxable period and added to the credit allowable under subsection (a)(1) for such succeeding taxable period.

"(c) QUALIFIED INVENTORY COSTS.—For purposes of this subchapter—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'qualified inventory costs' means, with respect to any taxable period, the costs of tangible personal property which—

"(A) are allocable to the inventory of a manufacturer under the full absorption method of accounting under section 471, and

"(B) are paid or incurred by the taxable person during such taxable period.

"(2) SPECIAL RULES.—For purposes of this subsection—

"(A) EXPENSING RATHER THAN DEPRECIATION OR AMORTIZATION.—If any portion of an allowance for depreciation or amortization with respect to any property would be allocable to the inventory of a manufacturer under the full absorption method of accounting, a like portion of the cost of such property shall be included in the qualified inventory costs of the taxpayer for the taxable period in which such property is placed in service. Treatment under the preceding sentence shall be in lieu of any allowance for depreciation or amortization.

"(B) PROPERTY MANUFACTURED FOR LEASE BY MANUFACTURER.—For purposes of computing qualified inventory costs, any tangible personal property which is manufactured for lease by the manufacturer shall be treated in the same manner as property which is manufactured for sale by the manufacturer.

"(d) CARRYFORWARD NOT ALLOWED FOR COSTS DURING PERIODS FOR WHICH RETURN NOT FILED.—

"(1) IN GENERAL.—In determining the amount allowable as a carryforward under subsection (b)(2), the qualified inventory costs of the taxable person during any taxable period shall be taken into account only if such person files a timely return (determined with regard to extensions) of the tax imposed by section 4681 for such period.

"(2) BASIS ADJUSTMENT FOR INCOME TAX PURPOSES.—For purposes of subtitle A, if the cost of any property is taken into account in determining the amount of the qualified inventory costs of the taxable person for any taxable period, the adjusted basis of such property shall be reduced by an amount equal to .08 percent of the qualified inventory costs of the taxpayer attributable to such property.

"PART IV—ADMINISTRATION

"Sec. 4688. Liability for tax.

"Sec. 4689. Return requirement; taxable period; depositary requirements.

"Sec. 4690. Regulations.

"SEC. 4688. LIABILITY FOR TAX.

"The taxable person shall be liable for the tax imposed by section 4681.

"SEC. 4689. RETURN REQUIREMENT; TAXABLE PERIOD; DEPOSITARY REQUIREMENTS.

"(a) RETURN REQUIREMENT.—

"(1) IN GENERAL.—Except as provided in this subsection, each taxable person shall file a return of the tax imposed by section 4681 for any taxable period not later than—

"(A) the due date (including extensions) for filing the taxpayer's return of tax under chapter 1, or

"(B) if no return of tax is required under chapter 1—

"(i) April 15 in the case of a taxpayer other than a corporation, and

"(ii) March 15 in the case of a corporation,

including extensions granted for purposes of this subchapter.

"(2) EXCEPTION FOR TAXABLE TRANSACTIONS OF $10,000,000 OR LESS.—A taxable person shall not be required to file a return for any taxable period for taxable transactions described in paragraph (1) of section 4683(a) if the aggregate taxable amount for such transactions is $10,000,000 or less. For purposes of the preceding sentence, there shall not be taken into account any transaction exempt from the tax imposed by section 4681 by reason of section 4686(c).

"(3) OTHER EXCEPTIONS.—The Secretary may by regulation exempt any taxable person from the requirement of paragraph (1).

"(b) TAXABLE PERIOD.—For purposes of this subchapter, the term 'taxable period' means—

"(1) the taxable person's taxable year for purposes of chapter 1, or

"(2) if there is no taxable year for purposes of chapter 1, the calendar year.

"(c) DEPOSITARY REQUIREMENTS.—

"(1) IN GENERAL.—In the case of any person with respect to whom a tax is imposed under section 4681 for any taxable period on any taxable transaction described in paragraph (1) of section 4683(a), such person shall make quarterly deposits of the estimated amount of such tax for the succeeding taxable period.

"(2) SPECIAL RULE FOR 1ST TAXABLE PERIOD.—Notwithstanding paragraph (1), a deposit shall be required for the 1st taxable period of any taxable person to which this subchapter applies if the gross receipts of such person during the 1st taxable year ending before such taxable period from the sale or leasing of tangible personal property manufactured by such person exceed $50,000,000.

"SEC. 4690. REGULATIONS.

"The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subchapter.

"PART V—DEFINITIONS; SPECIAL RULES

"Sec. 4691. Definitions; special rules.

"SEC. 4691. DEFINITIONS; SPECIAL RULES.

"(a) MANUFACTURER.—For purposes of this subchapter—

"(1) IN GENERAL.—The term 'manufacturer' includes any producer of tangible personal property (including raw materials).

"(2) CERTAIN ACTIVITIES NOT TAKEN INTO ACCOUNT.—A person shall not be treated as a manufacturer with respect to any property merely by reason of—

"(A) furnishing services incidental to the storage or transportation of such property, or

"(B) incidental preparation of property by a retailer or wholesaler (including routine assemblage).

"(b) SPECIAL RULE FOR TAXPAYERS UNDER COMMON CONTROL.—

"(1) IN GENERAL.—All persons which are—

"(A) members of the same controlled group of corporations (within the meaning of section 52(a)), or

"(B) under common control (within the meaning of section 52(b)),

shall be treated as 1 person for purposes of the $8,000 amount specified in section 4687(a)(2), the $10,000,000 amount specified in section 4689(a)(2), and the $50,000,000 amount specified in section 4689(c)(2).

"(2) ALLOCATION OF AMOUNTS.—The amounts specified in paragraph (1) shall be allocated among persons described in paragraph (1) in such manner as the Secretary may prescribe by regulations.

"(c) PERSON.—For purposes of this subchapter, the term 'person' includes any governmental entity.

"(d) UNITED STATES.—For purposes of this subchapter, the term 'United States' has the meaning given such term by section 4612(a)(4).

"(e) TANGIBLE PERSONAL PROPERTY.—For purposes of this subchapter, the term 'tangible personal property' includes gases.

"(f) IMPORT.—Except as otherwise provided in regulations, for purposes of this subchapter, the term 'import' means the entering, or withdrawal from warehouse, for consumption.

"(g) TAX ON IMPORT IN ADDITION TO DUTY.—The tax imposed by section 4681 on the importing of any tangible personal property shall be in addition to any duty imposed on such importation.

"(h) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4681.

"(i) SPECIAL RULE FOR SHORT TAXABLE PERIODS.—In the case of a taxable period which is less than 12 months, there shall be substituted for the dollar amounts otherwise applicable under sections 4687(a)(2) and 4689(a)(2) (determined after the application of subsection (b)) an amount which bears the same ratio to such amounts as the number of days in the taxable period bears to 365.

"(j) SALE TO INCLUDE CERTAIN EXCHANGES AND TRANSFERS.—For purposes of this subchapter, except as provided in regulations, the term 'sale' includes any exchange or other transfer, other than a gift (within the meaning of section 102 or section 170)."

(b) APPLICATION OF CERTAIN PENALTIES.—

(1) FAILURE TO FILE RETURN OR PAY TAX.—Paragraph (1) of section 6651(a) of such Code (relating

to addition to tax) is amended by inserting "section 4689 (relating to Superfund excise tax)," before "subchapter A of chapter 51".

(2) FAILURE TO MAKE DEPOSITS.—Section 6656 of such Code (relating to failure to make deposit of taxes or overstatement of deposits) is amended by adding at the end thereof the following new subsection:

"(c) SPECIAL RULE FOR SUPERFUND EXCISE TAX.—For purposes of subsection (a), in the case of the tax imposed by section 4681, the tax required to be deposited shall be equal to the lesser of—

"(1) 90 percent of the tax imposed by section 4681 during the taxable period on taxable transactions described in paragraph (1) of section 4683(a), or

"(2) the amount of such tax imposed during the preceding taxable period (determined on an annual basis).

Paragraph (2) shall not apply if no tax was imposed during the preceding taxable period.".

(c) TREATMENT OF INDIAN TRIBAL GOVERNMENTS.—Paragraph (2) of section 7871(a) of such Code (relating to Indian tribal governments treated as States for certain purposes) is amended by redesignating subparagraphs (A), (B), (C), and (D) as subparagraphs (B), (C), (D), and (E), respectively, and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) subchapter E of chapter 38 (relating to Superfund excise tax),".

(d) CLERICAL AMENDMENT.—The table of subchapters for chapter 38 of such Code is amended by inserting after the item relating to subchapter D the following new item:

"Subchapter E. Superfund excise tax."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply with respect to taxable amounts received in taxable periods ending after December 31, 1985.

(2) SPECIAL RULE FOR IMPORTS.—In the case of imports, the amendments made by this section shall apply to articles imported after December 31, 1985.

(3) SPECIAL RULE FOR TAXABLE PERIOD INCLUDING JANUARY 1, 1986.—In the case of any taxable period which begins before January 1, 1986, and ends on or after January 1, 1986, the tax imposed by section 4681 of the Internal Revenue Code of 1954 on taxable transactions described in paragraph (1) of section 4683(a) of such Code (and the credit allowable under section 4687 of such Code) for such taxable period shall be equal to an amount which bears the same ratio to the amount of such tax (and credit) for

such taxable period (determined as if such tax and credit had been in effect for the entire taxable period) as—

(A) the number of days in such taxable period after December 31, 1985, bears to

(B) the number of days in such taxable period.

SEC. 518. HAZARDOUS SUBSTANCE SUPERFUND.

(a) In general.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9504 the following new section:

"SEC. 9505. HAZARDOUS SUBSTANCE SUPERFUND.

"(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the 'Hazardous Substance Superfund' (hereinafter in this section referred to as the 'Superfund'), consisting of such amounts as may be—

"(1) appropriated to the Superfund as provided in this section,

"(2) appropriated to the Superfund pursuant to section 518(b) of the Superfund Revenue Act of 1985, or

"(3) credited to the Superfund as provided in section 9602(b).

"(b) TRANSFERS TO SUPERFUND.—There are hereby appropriated to the Superfund amounts equivalent to—

"(1) the taxes received in the Treasury under section 4611, 4661, 4671, 4674, 4677, or 4681 (relating to environmental taxes),

"(2) amounts recovered on behalf of the Superfund under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this section referred to as 'CERCLA'),

"(3) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

"(4) penalties assessed under title I of CERCLA, and

"(5) punitive damages under section 107(c)(3) of CERCLA.

"(c) EXPENDITURES FROM SUPERFUND.—

"(1) IN GENERAL.—Amounts in the Superfund shall be available, as provided in appropriation Acts, only for purposes of making expenditures—

"(A) to carry out the purposes of paragraphs (1), (2), (4), and (5) of section 111(a) of CERCLA as in effect on the date of the enactment of the Superfund Amendments of 1985, or

"(B) hereafter authorized by a law which authorizes the expenditure out of the Superfund for a general purpose covered by paragraphs (1), (2), (4), and (5) of such section 111(a) (as so in effect).

"(2) EXCEPTION FOR CERTAIN TRANSFERS, ETC. OF HAZARDOUS SUBSTANCES.—Amounts in the Superfund shall not be available for any transfer or disposal which could not be made but for section 118(d) of the Superfund Amendments of 1985, as in effect on the date of the enactment thereof.

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Superfund, as repayable advances, such sums as may be necessary to carry out the purposes of the Superfund.

"(2) REPAYMENT OF ADVANCES.—

"(A) IN GENERAL.—Advances made pursuant to this subsection shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Superfund.

"(B) FINAL REPAYMENT.—No advance shall be made to the Superfund after September 30, 1990, and all advances to such Fund shall be repaid on or before such date.

"(C) Rate of interest.—Interest on advances made pursuant to this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

"(e) Liability of United States Limited to Amount in Trust Fund.—

"(1) General rule.—Any claim filed against the Superfund may be paid only out of the Superfund.

"(2) Coordination with other provisions.—Nothing in CERCLA or the Superfund Amendments of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Superfund.

"(3) Order in which unpaid claims are to be paid.—If at any time the Superfund has insufficient funds to pay all of the claims payable out of the

Superfund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined."

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund for fiscal year—

(1) 1986, $36,000,000,

(2) 1987, $36,000,000,

(3) 1988, $36,000,000,

(4) 1989, $36,000,000, and

(5) 1990, $36,000,000,

plus for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Act of 1980, as in effect before its repeal) as has not been appropriated before the beginning of the fiscal year involved.

(c) CONFORMING AMENDMENTS.—

(1) Subtitle B of the Hazardous Substance Response Revenue Act of 1980 (relating to establishment of Hazardous Substance Response Trust Fund) is hereby repealed.

(2) Paragraph (11) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"(11) 'Fund' or 'Trust Fund' means the Hazardous Substance Superfund established by section 9505 of the Internal Revenue Code of 1954;".

(d) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9504 the following new item:

"Sec. 9505. Hazardous Substance Superfund."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on November 1, 1985.

(2) SUPERFUND TREATED AS CONTINUATION OF OLD TRUST FUND.—The Hazardous Substance Superfund established by the amendments made by this section shall be treated for all purposes of law as a continuation of the Hazardous Substance Response Trust Fund established by section 221 of the Hazardous Substance Response Revenue Act of 1980. Any reference in any law to the Hazardous Substance Response Trust Fund established by such section 221 shall be deemed to include (wherever appropriate) a reference to the Hazardous Substance Superfund established by the amendments made by this section.

PART II—LEAKING UNDERGROUND STORAGE TANK TRUST FUND AND ITS REVENUE SOURCES

SEC. 521. ADDITIONAL TAX ON GASOLINE, DIESEL FUEL, AND SPECIAL MOTOR FUELS.

(a) General Rule.—

(1) Gasoline.—Section 4081 of the Internal Revenue Code of 1954 (relating to imposition of tax on gasoline) is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a) Tax To Fund Highway Program.—

"(1) In general.—There is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 9 cents a gallon.

"(2) Termination.—On and after October 1, 1988, the tax imposed by paragraph (1) shall not apply.

"(b) Additional Tax To Fund Leaking Underground Storage Tank Trust Fund.—

"(1) In general.—In addition to the tax imposed by subsection (a), there is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 0.2 cents a gallon.

"(2) Termination.—

"(A) In general.—The tax imposed by paragraph (1) shall not apply after the earlier of—

"(i) September 30, 1990, or

"(ii) the last day of the termination month.

"(B) TERMINATION MONTH.—For purposes of subparagraph (A), the termination month is the 1st month as of the close of which the Secretary estimates that the net revenues from the taxes imposed by paragraph (1) and section 4041(d) are at least $850,000,000.

"(C) NET REVENUES.—For purposes of subparagraph (B), the term 'net revenues' means the excess of gross revenues over amounts payable by reason of section 9506(c)(2) (relating to transfer from Leaking Underground Storage Tank Trust Fund for certain repayments and credits)."

(2) DIESEL AND SPECIAL MOTOR FUELS.—Section 4041 of such Code (relating to tax on special fuels) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) ADDITIONAL TAX ON DIESEL FUEL AND SPECIAL MOTOR FUELS TO FUND LEAKING UNDERGROUND STORAGE TANK TRUST FUND.—

"(1) DIESEL FUEL.—In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.2 cents a gallon on any liquid (other than a product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle for use as a fuel in such vehicle, or

"(B) used by any person as a fuel in a diesel-powered highway vehicle unless there was a taxable sale of such liquid under subparagraph (A).

"(2) SPECIAL MOTOR FUELS.—In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.2 cents a gallon on benzol, benzene, naphtha, liquefied petroleum gas, casing head and natural gasoline, or any other liquid (other than kerosene, gas, oil, or fuel oil, or any product taxable under section 4081 or paragraph (1) of this subsection)—

"(A) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat, or

"(B) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such liquid under subparagraph (A).

"(3) TERMINATION.—The taxes imposed by this subsection shall not apply during any period during which no tax is imposed by section 4081(b)."

(b) ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND OR AIRPORT AND AIRWAY TRUST FUND.—

(1) HIGHWAY TRUST FUND.—

(A) IN GENERAL.—Subsection (b) of section 9503 of such Code (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes) is amended by adding at the end thereof the following new paragraph:

"(4) CERTAIN ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.—For purposes of paragraphs (1) and (2), the taxes imposed by sections 4041(d) and 4081(b) shall not be taken into account."

(B) CONFORMING AMENDMENT.—Subparagraph (D) of section 9503(c)(4) of such Code (defining motorboat fuel taxes) is amended by striking out "section 4081" and inserting in lieu thereof "section 4081(a)".

(2) AIRPORT AND AIRWAY TRUST FUND.—Subsection (b) of section 9502 of such Code (relating to transfer to Airport and Airway Trust Fund of amounts equivalent to certain taxes) is amended—

(A) by striking out "subsections (c) and (d) of section 4041" in paragraph (1) and inserting in lieu thereof "subsections (c) and (e) of section 4041", and

(B) by striking out "section 4081" in paragraph (2) and inserting in lieu thereof "section 4081(a)".

(c) Repayments for Gasoline Used on Farms, Etc.—

(1) Gasoline used on farms.—Subsection (h) of section 6420 of such Code (relating to termination) is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081(b), this section".

(2) Gasoline used for certain nonhighway purposes or by local transit systems.—Subsection (h) of section 6421 of such Code (relating to effective date) is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081(b), this section".

(3) Fuels used for nontaxable purposes.—

(A) Subsection (m) of section 6427 of such Code (relating to termination) is amended by striking out "Subsections" and inserting in lieu thereof "Except with respect to taxes imposed by sections 4041(d) and 4081(b), subsections".

(B) Section 6427 of such Code is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) PAYMENTS FOR TAXES IMPOSED BY SECTION 4041(d).—For purposes of subsections (a), (b), and (c), the taxes imposed by section 4041(d) shall be treated as imposed by section 4041(a)."

(C) Paragraph (1) of section 6427(f) of such Code (relating to gasoline used to produce certain alcohol fuels) is amended by striking out "section 4081" and inserting in lieu thereof "section 4081(a)".

(d) CONTINUATION OF CERTAIN EXEMPTIONS FROM ADDITIONAL TAXES.—

(1) Subsection (b) of section 4041 of such Code (relating to exemption for off-highway business use; exemption for qualified methanol and ethanol fuel) is amended by adding at the end thereof the following new paragraph:

"(3) COORDINATION WITH TAXES IMPOSED BY SUBSECTION (d).—

"(A) IN GENERAL.—Except as provided in subparagraph (B), rules similar to the rules of paragraphs (1) and (2) shall apply with respect to the taxes imposed by subsection (d).

"(B) TERMINATION NOT TO APPLY.—Subparagraph (C) of paragraph (2) shall not apply with respect to the taxes imposed by subsection (d)."

(2) Paragraph (3) of section 4041(f) of such Code (relating to exemption for farm use) is amended by striking out "On and after" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), on and after".

(3) The last sentence of section 4041(g) of such Code (relating to other exemptions) is amended by striking out "Paragraphs" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), paragraphs".

(4) The last sentence of section 4221(a) of such Code (relating to certain tax-free sales) is amended by striking out "4081" and inserting in lieu thereof "4081(a)".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on November 1, 1985.

SEC. 522. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9505 the following new section:

"SEC. 9506. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Leaking Underground Storage Tank Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Leaking Underground Storage Tank Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under sections 4041(d) and 4081(b) (relating to additional taxes on motor fuels and gasoline), and

"(2) amounts collected under section 9003(h)(6) of the Solid Waste Disposal Act.

"(c) EXPENDITURES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), amounts in the Leaking Underground Storage Tank Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures to carry out section 9003(h) of the Solid Waste Disposal Act as in effect on the date of the enactment of the Superfund Amendments of 1985.

"(2) TRANSFERS FROM TRUST FUND FOR CERTAIN REPAYMENTS AND CREDITS.—

"(A) IN GENERAL.—The Secretary shall pay from time to time from the Leaking Underground Storage Tank Trust Fund into the general fund of the Treasury amounts equivalent to—

"(i) amounts paid under—

"(I) section 6420 (relating to amounts paid in respect of gasoline used on farms),

"(II) section 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems), and

"(III) section 6427 (relating to fuels not used for taxable purposes), and

"(ii) credits allowed under section 34,

with respect to the taxes imposed by sections 4041(d) and 4081(b).

"(B) TRANSFERS BASED ON ESTIMATES.—Transfers under subparagraph (A) shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(d) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Leaking Underground Storage Tank Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or the Superfund Amendments of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Leaking Underground Storage Tank Trust Fund.

"(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Leaking Underground Storage Tank Trust Fund has insufficient funds to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9505 the following new item:

"Sec. 9506. Leaking Underground Storage Tank Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on November 1, 1985.

PART III—OIL SPILL LIABILITY TRUST FUND AND ITS REVENUE SOURCES

SEC. 531. INCREASE IN ENVIRONMENTAL TAX ON PETROLEUM.

(a) IN GENERAL.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum), as amended by section 511 of this Act, are each amended by striking out "of 3.85 cents a barrel" and inserting in lieu thereof "at the rate specified in subsection (c)".

(b) INCREASE IN TAX.—Section 4611 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the taxes imposed by this section is the sum of—

"(A) the Hazardous Substance Superfund financing rate, and

"(B) the Oil Spill Liability Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Hazardous Substance Superfund financing rate is 3.85 cents a barrel, and

"(B) the Oil Spill Liability Trust Fund financing rate is 1.3 cents a barrel."

(c) CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 4611 of such Code (relating to application of taxes), as redesignated by subsection (b), is amended to read as follows:

"(e) APPLICATION OF TAXES.—

"(1) SUPERFUND RATE.—The Hazardous Substance Superfund financing rate under subsection (c) shall apply after October 31, 1985, and before October 1, 1990.

"(2) OIL SPILL RATE.—The Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after December 31, 1985, and before October 1, 1990."

(2) Subsection (d) of section 4661 of such Code (relating to termination of tax on certain chemicals) is amended to read as follows:

"(d) APPLICATION OF TAXES.—The tax imposed by this section shall apply after October 31, 1985, and before October 1, 1990."

(3) Subsection (b) of section 9505 of such Code (relating to transfers to Superfund) is amended by adding at the end thereof the following:

"In the case of the tax imposed by section 4611, paragraph (1) shall apply only to so much of such tax as is attributable to the Superfund financing rate under section 4611(c)."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1986.

SEC. 532. OIL SPILL LIABILITY TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9506 the following new section:

"SEC. 9507. OIL SPILL LIABILITY TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Oil Spill Liability Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Oil Spill Liability Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under section 4611 (relating to environmental tax on petroleum) to the extent attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c),

"(2) amounts recovered, collected, or received under subtitle A of the Comprehensive Oil Pollution Liability and Compensation Act,

"(3) amounts remaining on the date of the enactment of this section in the Deep Water Port Liability Fund established by section 18(f) of the Deep Water Port Act of 1974, and

"(4) amounts remaining on the date of the enactment of this section in the Offshore Oil Pollution Compensation Fund established under section 302 of the Outer Continental Shelf Lands Act Amendments of 1978.

"(c) EXPENDITURES.—

"(1) IN GENERAL.—Amounts in the Oil Spill Liability Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures for—

"(A) the payment of removal costs described in section 401(24)(A) of the Comprehensive Oil Pollution Liability and Compensation Act, as in effect on the date of the enactment of this section, "(B) the payment of contributions to the International Fund under section 404 of such Act,

"(C) the payment of removal costs for which the Deep Water Port Liability Fund is liable under the Deep Water Port Act of 1974,

"(D) the payment of removal costs for which the Offshore Oil Pollution Compensation Fund is liable under title III of the Outer Continental Shelf Lands Act Amendments of 1978, and

"(E) the payment of all expenses of administration incurred by the Federal Government under the Comprehensive Oil Pollution Liability and Compensation Act.

Under regulations prescribed by the Secretary, amounts shall be available under subparagraph (B) with respect to any contribution to the International Fund only in proportion to the portion of the International Fund used for the payment of response costs.

"(2) LIMITATIONS ON EXPENDITURES.—

"(A) $200,000,000 PER INCIDENT.—The maximum amount which may be paid from the Oil Spill Liability Trust Fund with respect to any single incident shall not exceed $200,000,000.

"(B) $30,000,000 MINIMUM BALANCE.—Except in the case of payments described in paragraph (1)(A), a payment may be made from such Trust Fund only if the amount in such Trust Fund after such payment will not be less than $30,000,000.

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Oil Spill Liability Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

"(2) LIMITATION ON AMOUNT OUTSTANDING.—The maximum aggregate amount of repayable advances to the Oil Spill Liability Trust Fund which is outstanding at any one time shall not exceed $300,000,000.

"(3) REPAYMENT OF ADVANCES.—Rules similar to the rules of paragraph (2) of section 9505(d) shall apply for purposes of this subsection.

"(e) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Oil Spill Liability Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Oil Pollution Liability and Compensation Act or the Superfund

Amendments of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Oil Spill Liability Trust Fund.

"(f) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Oil Spill Liability Trust Fund has insufficient funds (or is unable by reason of subsection (c)(2)) to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under such subsections, be paid in full in the order in which they were finally determined."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9506 the following new item:

"Sec. 9507. Oil Spill Liability Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1986.

PART IV—STUDIES

SEC. 541. STUDY OF IMPACT OF WASTE MANAGEMENT TAX ON DOMESTIC MANUFACTURERS.

(a) GENERAL RULE.—The Secretary of the Treasury or his delegate shall conduct a study on the effects of the tax imposed by section 4671 of the Internal Revenue Code of

1954 on the ability of domestic manufacturers to compete in international trade.

(b) REPORT.—Not later than July 1, 1986, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under subsection (a). Such report shall include recommendations to minimize the trade impact of such tax and there shall be considered, in making such recommendations, a waste management tax export credit, an import equalization fee, and a maximum amount of tax with respect to hazardous waste generated by economically distressed industries.

SEC. 542. STUDY OF LEAD POISONING.

(a) IN GENERAL.—The Administrator of the Agency for Toxic Substances and Disease Registry shall, in consultation with the Administrator of the Environmental Protection Agency and other officials as appropriate, not later than March 1, 1986, submit to the Committee on Environment and Public Works, and the Committee on Finance, of the Senate and the Committee on Energy and Commerce, and the Committee on Ways and Means, of the House of Representatives, a report on the nature and extent of lead poisoning in children from environmental sources. Such report shall include, at a minimum, the following information:

(1) an estimate of the total number of children, arrayed according to Standard Metropolitan Statistical Area or other appropriate geographic unit, exposed to environmental sources of lead at concentrations sufficient to cause adverse health effects;

(2) an estimate of the total number of children exposed to environmental sources of lead arrayed according to source or source types;

(3) a statement of the long term consequences for public health of unabated exposures to environmental sources of lead, including (but not limited to) diminution in intelligence and increases in morbidity and mortality; and

(4) methods and alternatives available for reducing exposures of children to environmental sources of lead.

(b) EVALUATION OF SPECIFIC SITES.—Such report shall also score and evaluate specific sites at which children are known to be exposed to environmental sources of lead due to releases, utilizing the Hazard Ranking system of the National Priorities List.

(c) AUTHORIZATION FROM SUPERFUND.—There are authorized to be appropriated from the Hazardous Substance Superfund such sums as may be necessary to prepare and submit the report required by this section.

PART V—COORDINATION WITH OTHER PROVISIONS OF THIS ACT

SEC. 551. COORDINATION.

Notwithstanding any provision of this Act not contained in this title, any provision of this Act (not contained in this title) which—

(1) imposes any tax, premium, or fee,

(2) establishes any trust fund, or

(3) authorizes amounts to be expended from any trust fund which are not also authorized by this title,

shall have no force or effect.

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[From the Congressional Record, Dec. 5, 1985, pp. H10948-H10953, H11069-H11143, H11151-H11207]

PROVIDING FOR CONSIDERATION OF H.R. 2817, SUPERFUND AMENDMENTS OF 1985

Mr. PEPPER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 331 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

IV

House Calendar No. 104

99TH CONGRESS
1ST SESSION

H. RES. 331

[Report No. 99–413]

Providing for the consideration of the bill (H.R. 2817) to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 4, 1985

Mr. PEPPER, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

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RESOLUTION

Providing for the consideration of the bill (H.R. 2817) to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2817) to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes, and the first reading of the bill shall be dispensed with. All points of order against the consideration of the bill for failure to comply with the provisions of section 402(a) of the Congressional Budget Act of 1974 (Public Law 93–344) are hereby waived. After general debate, which shall be confined to the bill and to the amendments made in order by this resolution, and which shall continue not to exceed four hours, one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce, one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Public Works and Transportation, one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, and thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on Merchant Marine and Fisheries, the bill shall be considered for amendment under the five-minute rule. In lieu of the amendments recommended by such committees now printed in the bill, it shall be in order to consider an amendment in the nature of a substitute consisting of the text of the bill H.R. 3852 as an original bill for the purpose of amendment under the five-minute rule, said substitute shall be read for amendment by titles instead of by sections and each title shall be considered as having been read, and all points of order against said substitute are hereby waived. No amendment which changes title V of said substitute or which is otherwise within the jurisdiction of the Committee on Ways and Means under clause 1 (v)(1) or (3) of rule X shall be in order except those specified in the succeeding sentence. It shall be in order to consider the following amendments, in the following order only, to title V, all points of order against said amendments are hereby waived, and said amendments shall not be subject to amendment: (1) the amendment printed in the Congressional Record of December 4, 1985 by, and if offered by, Representative Duncan of Tennessee or his designee, and said amendment shall be debatable for not to exceed one hour, to be equally divided and controlled by the proponent of the amendment and a Member opposed thereto; (2) the amendment printed in the Congressional Record of December 4, 1985 by, and if offered by, Representative Downey of New York or his designee, and said amendment shall be debatable for not to exceed one hour, to be equally divided and controlled by the proponent of the amendment and a Member opposed thereto; and (3) amendments recommended by the Committee on Ways and Means if neither of the amendments designated (1) and (2) has been adopted. If both amendments designated (1) and (2) above are adopted, only the second such amendment shall be considered as having been finally adopted and reported back to the House. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text by this resolution, subject to the preceding sentence. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions. After the passage of H.R. 2817, it shall be in order to consider, any rule of the House to the contrary notwithstanding, a motion to take from the Speaker's table the bill H.R. 2005 with the Senate amendments thereto, to agree to the Senate amendments to the text and the title with amendments inserting in lieu thereof the texts of H.R. 2817 as passed by the House and its title, respectively, to insist on said amendments, and to request a conference with the Senate thereon, and said amendments shall be considered as having been read.

□ 1140

The SPEAKER pro tempore. The gentleman from Florida [Mr. PEPPER] is recognized for 1 hour.

Mr. PEPPER. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Tennessee [Mr. QUILLEN], for purposes of debate only, pending which I yield myself such time as I may consume.

(Mr. PEPPER. asked and was given permission to revise and extend his remarks.)

Mr. PEPPER. Mr. Speaker, House Resolution 331 is a modified open rule providing for the consideration of H.R. 2817 the Superfund Amendments of 1985. The rule provides for 4 hours of general debate of which 1 hour is to be controlled by the Committee on Energy and Commerce, 1 hour to be controlled by the Committee on Public Works and transportation, 1 hour to be controlled by the Committee on Ways and Means, 30 minutes to be controlled by the Committee on Merchant Marine and Fisheries and 30 minutes to be controlled by the Committee on the Judiciary.

The rule waives section 402(a) of the Comgressional Budget Act against consideration of the bill. Section 402(a) prohibits consideration of any legislation which authorizes the enactment of new budget authority for a fiscal year unless that bill has been reported on or before May 15 preceding the beginning of such fiscal year. Since the bill authorizes the enactment of new budget authority for fiscal year 1986, and was not reported on or before May 15, 1985, it would be subject to a point of order under the Budget Act.

The rule makes in order consideration of an amendment in the nature of a substitute which consists of the text of H.R. 3852 as original text for the purposes of amendment under the 5-minute rule.

Mr. Speaker, the first four titles of this bill are open to any germane amendments which do not otherwise violate House rules. The rule provides that the substitute is to be read for amendment by titles rather than by sections. All points of order are waived against the substitute.

Title V of the bill would raise revenues and authorize appropriations to finance the Superfund trust fund, and the rule provides that during consideration of the first four titles of the bill, no amendment that would change, affect, or delete title V would be in order. The committee has crafted a rule which will permit consideration of two amendments which propose alternative approaches to the tax provisions.

The rule provides that no amendments shall be in order to title V except an amendment by Representative DUNCAN which is printed in the CONGRESSIONAL RECORD of December 4, 1985, and an amendment by Representative DOWNEY also printed in the CONGRESSIONAL RECORD of December 4, 1985. These amendments shall be considered in the specified order, are not amendable, but shall each be open to debate for 1 hour. I would point out that the amendment by Mr. DOWNEY would be in order even if Mr. DUNCAN's amendment is adopted. Under the rule, the last amendment adopted would prevail. In the event neither of these amendments is adopted, the rule provides for the consideration of amendments recommended by the Committee on Ways and Means.

At the conclusion of the bill's consideration under the 5-minute rule, no further amendments may be considered to the substitute, and the Committee of the Whole is to rise and report to the House with any amendments and any Member may demand that a separate vote be taken on any amendment adopted in the Committee of the Whole to the bill or the amendment in the nature of a substitute. The rule provides for one motion to recommit with or without instructions.

Finally, the rule provides that after passage of H.R. 2817, all points of order are waived against a motion to take H.R. 2005 from the Speaker's table with the Senate amendments thereto, substitute the text of H.R. 2817 as passed by the House for the Senate amendments, insist on the House amendments, and request a conference with the Senate. This procedure simply facilitates a conference on the Superfund program. Prompt action is important because the taxing mechanism for Superfund expired at the end of October, and the program has been without adequate funds for 2 months.

Mr. Speaker, H.R. 2817 amends and

reauthorizes the Comprehensive Environmental Response, Compensation and Liability Act, more normally known as Superfund. The bill would provide $10 billion in funding over the next 5 years to be used to continue the cleanup of the Nation's worst abandoned hazardous waste sites. The bill would provide several important new initiatives including the establishment of a citizen's right to sue polluters, a program to clean up leaking underground gasoline storage tanks, and the creation of new information and emergency planning systems to protect communities against the accidental release of toxic chemicals into the air, land, and water.

The bill would enlarge the Superfund trust fund by raising the level of taxation on petroleum and chemical feedstocks, and by implementing new taxes on manufacturers, on imported chemical products, and on the generators and disposers of hazardous waste. While general revenues will continue to be a source of funding, they will be contributed at a lower rate to limit the impact of the program on our very serious budget situation.

Mr. Speaker, the reauthorization of Superfund has been a lengthy, complex and divisive process.

I would like at this time to extend the warmest thanks of the Committee on Rules, and I believe I speak for this whole House, to the distinguished gentleman from Michigan [Mr. DINGELL], the chairman of the Committee on Energy and Commerce, and the distinguished gentleman from New Jersey [Mr. HOWARD], the chairman of the Committee on Public Works and Transportation, for their extraordinary fidelity to the effort, which succeded, to come to a compromise between those two important committees, both having jurisdiction of the matter of the contents of the bill now before the House.

☐ 1150

We in the Rules Committee know how complex this problem is and if we had been faced with a bitter dispute or sharp difference of opinion between those two important committees, it would have been extremely difficult for the Rules Committee, and I think it would have been extremely difficult for the House to have determined what is the right course in the public interest for us to pursue.

Now, by the kindness and the diligent and dedicated work of these two great committee chairmen and their colleagues and associates, we are presented with a unified bill produced by those two important committees, Energy and Commerce and Public Works and Transportation.

I wish in the warmest way to express the commendation of the Rules Committee and I believe of the whole House toward these two committee chairmen and to their colleagues for the magnificent spirit of compromise and cooperation which they have shown in producing this matter for the consideration of the House.

By adopting the rule, Mr. Speaker, we can get on with the great and important business of cleaning up the thousands of toxic and hazardous waste sites which threaten lives and the environment all across the country.

I urge my colleagues, therefore, to adopt Resolution 331 so that we might proceed to debate, and I hope to an early passage of this important legislation.

Mr. QUILLEN. Mr. Speaker, I yield myself as much time as I may use.

(Mr. QUILLEN asked and was given permission to revise and extend his remarks.)

Mr. QUILLEN. The able gentleman from Florida, [Mr. PEPPER] has explained in detail the provisions of the rule. It is indeed a complicated rule, one of the most complicated I believe that has come out of the Rules Committee in several months.

We labored hard and long yesterday, all day long as a matter of fact, on the Superfund rule, heard many, many, many witnesses, but came out in the end with a rule that I think everybody can live with. The taxing authority of the Superfund expired September 30, 1985. So we need extension of the Superfund legislation. It is so important to the whole country and I think all the various committees involved agree with this.

For getting together and working out compromises, my hat is off to the committees who worked hard and long to bring this legislation to the floor.

I offered an amendment in the Rules Committee, which unfortunately was turned down, to give credit to the coal industry for the funds that they pay under the stripmining legislation to restore what needs to be restored. It made sense to me because otherwise the coal industry may be subject to double taxation under Superfund.

Two amendments, the Downey-Frenzel amendment and the Duncan amendment were made in order. I favor the Duncan amendment because it is fair and reasonable and I urge my colleagues to vote against the Downey-Frenzel amendment because it puts a tremendous burden on certain business classifications and industry classifications. But overall, I think it is necessary that we get down to the business of passing this rule.

Here it is, just a few days before Christmas and we face hurdles that should have been faced weeks and months ago. I remember in 1983, we were here the day before Christmas. I remember on other occasions, we were here before Christmas and then met a few days after and then were in session until the end of the year. Hopefully, that will not be true this session.

Mr. Speaker, I urge the adoption of the rule and I reserve the balance of my time.

Mr. PEPPER. Mr. Speaker, I yield myself such time as I may consume.

May I just add in reference to the comment of my distinguished friend from Tennessee [Mr. QUILLEN] in respect to the coal industry that that matter would be taken care of, I think satisfactorily to the gentleman from Tennessee, if either the Duncan amendment or the Downey amendment, both of which we made in order, should be adopted by the House.

Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. ECKART].

(Mr. ECKART of Ohio asked and was given permission to revise and extend his remarks.)

Mr. ECKART of Ohio. Mr. Speaker, today we indeed approach a most important and significant milestone in the creation of an important regulatory program for the health and welfare of our Nation's citizens. The adoption of the rule and the passage of the bill I sponsored, along with the gentleman from New York, NORM LENT, H.R. 2817, will put this House foursquare in front of strong environmental protection legislation: the Superfund Reauthorization Act of 1985.

The importance of our bill is that it is reasonable and flexible. It is practical, yet holds the regulator's feet to the fire. It is environmentally responsible, ye avoids goldplating, and it is flexible while yet avoiding the open-ended problems of unneeded bureaucratic delay.

Mr. Speaker, H.R. 2817 has been on a long and difficult evolutionary path. I salute my colleagues from the Committee on Public Works and Transportation, the gentleman from Kentucky [Mr. SNYDER], the gentleman from Minnesota [Mr. STANGELAND], the gentleman from New Jersey [Mr. HOWARD], and the gentleman from New Jersey [Mr. ROE]; my colleagues from the Committee on Energy and Commerce, the gentleman from New York [Mr. LENT], and the gentleman from North Carolina [Mr. BROYHILL]; and those from the Committee on Merchant Marine and Fisheries and the Committee on the Judiciary who have walked that extra mile, who have taken that extra step to give us the kind of bill that I believe we all can honestly and truthfully embrace today.

H.R. 2817 is important and necessary because the politics of pollution know no geographic or individual boundaries. it seeps quietly and unseemly into individuals' backyards.

But continuing to perpetuate the politics of business as usual in the cleanup of the Nation's hazardous waste dump sites is neither in our constituents' nor our country's interest. The passage of this rule and the important settlement, scheduling and research and development options that the bill reflects, and which are contained with the adoption of this rule, are necessary truly if we want to take a giant leap forward for both our constituents and our country in the control of hazardous waste pollution that is a danger in all of our backyards across the United States.

Mr. Speaker, I urge the adoption of the rule, and hopefully with timely consideration of the rule and the bill today, we can commence the necessary conference work that needs to be done in order to hammer out the differences between our bill and that which passed the other body.

I urge the adoption of the bill and

the rule.

Mr. PEPPER. Mr. Speaker, I yield 1 minute to the gentleman from Oregon [Mr. WYDEN].

(Mr. WYDEN asked and was given permission to revise and extend his remarks.)

Mr. WYDEN. Mr. Speaker, I rise in support of this rule and the bill. I think it is fair to say that the Superfund essentially has been a super bust. We have spent $1.6 billion and cleaned up virtually no sites in this country.

Literally what we have done is essentially moved these wastes from one site to another, running a toxic waste merry-go-round that does not do anything to protect the health and well-being of the American people.

I think this bill is going to help to turn this situation around. What it does is strike a practical balance. We hold the agency's feet to the fire, and at the same time we come with realistic provisions to make sure that they obtain the goals.

There are a couple of provisions I am particularly happy about. Mr. Speaker, the research and development provision and the waste and tax provisions. Both provisions give us a chance to end the toxic waste merry-go-round that is moving these wastes from one site to another. We lock in place some real incentives to recycle wastes and to treat wastes, to not produce these wastes in the first place. I think that is the way to go. I think that is a fundamental shift from the way we have done business in the past.

If we pass this legislation, this bill will be the first piece of environmental legislation that gives economic incentives to not pollute, to recycle and to treat wastes. I think that is the way to go, and I yield back the balance of my time.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

In analyzing the two amendments authorized by the Rules Committee, as I said, I prefer the Duncan amendment over the Downey amendment. But in the end, the Ways and Means provision on taxation is the best of all.

But the way the Rules Committee crafted the king-of-the-mountain rule is that if the Downey amendment passes, it is a substitute for the Ways and Means Committee language, and we will not get down to debating the Ways and Means proposal on the floor. So remember that, of the two amendments, I prefer and urge you to vote for Duncan, but in the end, I prefer the Ways and Means Committee language because I feel that it is the best.

Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I thank the gentleman from Tennessee for yielding me this time.

Mr. Speaker, I do not think anyone doubts the need to reauthorize an important program like the Superfund. One of the problems that we have in this body, though, is weighing relative priorities.

We are caught in that dilemma in this rule because on one hand, you have the importance of reauthorizing Superfund; on the other hand, you have the question of the budget of this country that most Americans regard as being a very important priority. What are we really doing about deficits?

Well, what we are really doing about deficits again in this particular rule is waiving the Budget Act. Once again in this rule, we are coming to the floor and saying, folks, it is time to spend the money, forget the Budget Act. This bill on page 2 waives section 402 of the Budget Act. Section 402 says that you have got to report these bills in a timely manner. This bill was not reported in a timely manner so, therefore, it is subject to a point of order under the Budget Act. The fact is, we are waiving that.

People will say, well, that is not important. The fact is that we would not spend the money—period—if we obeyed the Budget Act. We are not going to do that. We are going to waive the Budget Act.

But more important than that perhaps is the fact that, on page 3, all points of order are waived against the substitute, all points of order are waived against the amendments under this bill. What that means is that you have a major budgetbuster because, according to the information that has been given us by a member of the Ways and Means Committee, between 1986 and 1990 on any of the three plans we are talking about, we have budget exposure to the tune of between $10 billion and $11 billion. Some of that involves exposure not only in terms of revenues, but also in terms of general appropriations, because at least one of the plans we will have before us involves $2 billion of general revenues not included in the tax plan.

All points of order against those as they relate to the Budget Act are waived. That means that you have $10 billion worth of budget exposure over the next 4 years that is being waived.

The point is simply this: We, as a matter of course in these rules, time after time after time, are telling the American people, I think, something very clear, and that is that our system of priorities around here makes the Budget Act a very, very low part of that system. We are saying time and time again that the deficit really does not matter because the only place where we deal with deficits is in the Budget Act. That is the place where we focus on what we are going to do in deficits.

Finally, when we come to the rules that make spending in order, we say time after time after time that the Budget Act does not matter, the whole question of deficits does not matter. Waive the Budget Act, go ahead and spend the money.

We are doing that again in this rule. This rule waives the Budget Act. I think it deserves a "no" vote.

Mr. PEPPER. Mr. Speaker, I yield 4 minutes to the able gentleman from Michigan [Mr. DINGELL], chairman of the Committee on Energy and Commerce.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

□ 1205

Mr. DINGELL. Mr. Speaker, I want to pay tribute to my colleagues on the Committee on Rules for having crafted a rule which makes extraordinarily good sense, and which enables the House to work its will on this matter in a fashion which is in the broad public interest.

I want to commend my colleagues who are part of the understandings between the Committee on Energy and Commerce and the Committee on Public Works and Transportation. Their labors have simplified the work of the House, and have made it possible for us to move forward toward a good piece of legislation, which will be of significant help in addressing the problems of this country with regard to hazardous waste sites.

I want to pay particular tribute to the patience and the efforts that all of my colleagues showed in bringing to the House a compromise that has been offered in the form of legislation sponsored by the distinguished majority leader, Mr. WRIGHT, and the distinguished minority leader, Mr. MICHEL.

I believe this action shows the importance that the leadership on both sides of the aisle attach to the programmatic aspects of the bill. I want to make it clear. I take no position at this time and make no suggestions to the House with regard to the tax portions of the legislation. Those matters are, of course, within the jurisdiction of another committee, and that committee should make the necessary recommendations on the tax portions of the bill to my colleagues in the House.

With regard to the content of the legislation, there will be an abundance of time for the explanation of the provisions of the legislation. Suffice it to say, that essentially it is a compromise between the amendments reported by the Committee on Public Works and the Committee on Energy and Commerce, and suffice it to say, that although there has been give on both sides, the package is fully acceptable to, and is supported by, the leadership in both committees on both sides.

My good friend from Pennsylvania recently had some comments about budgets and budget costs. There are certain things that are not subject to quantification. One is the cleanup of hazardous waste sites which threaten not only the environment but the health and the well-being of American people everywhere. More importantly, these sites not only threaten all Americans' health now but, even if there is no new hazardous waste generated from this moment forward, there is significant peril to future generations through contamination of soil and surface water, subsurface water, the water supplies, the air and the other environmental dependencies of this Nation.

I would urge my colleagues to recognize that the cost of this cleanup may be one of the best investments that can be found in the budget document. The need to finance this fully and adequately is extremely important.

The number of sites is something above 10,000, and may be as high as 20,000. The peril is enormous to our citizens. It is particularly obvious when you go to places like Love Canal or Globe, AZ. It is also apparent when you look at the contamination of major aquifers like the Ogallala Aquifer, which begins at the Canadian border and flows south to the gulf. This aquifer has a tremendous impact on the millions of people who are dependent upon it. Remember, a third of our population is dependent upon aquifers for clean water. The effect is enormous.

We have a limited time to deal with this issue. I am urging my colleagues to move speedily to resolve this matter, and it is my hope that consideration of this legislation can be concluded today at least insofar as the programmatic parts are concerned. I am urging action today, not tomorrow, but today, because it is important that we provide funding to clean up one of the major environmental problems of this Nation.

It must be observed that the funding portions expired September 30. At that time there was something like $130 million available in the fund for the cleanup of hazardous waste sites. Those funds are being expended. Not only are the funds approaching an intolerably low level in terms of addressing the problems of cleanup but the program is also beginning to lose momentum. It is extremely important, my colleagues should know, that we move forward rapidly today to pass H.R. 2817 so that the House may appoint its conferees and we may try to reach a conclusion on this matter.

Again, Mr. Speaker, I commend my colleagues for the difficult work that they have done and hope that my colleagues will support the substitute.

Mr. QUILLEN. Mr. Speaker, I yield 4 minutes to the gentleman from New York [Mr. LENT].

(Mr. LENT asked and was given permission to revise and extend his remarks.)

Mr. LENT. Mr. Speaker, I rise in strong support of Resolution 331, granting a rule for H.R. 2817, the Superfund Amendments of 1985. I cosponsored this legislation along with a number of others, including the distinguished gentleman from Ohio [Mr. ECKART], the distinguished chairman of the Committee on Energy and Commerce, the gentleman from Michigan [Mr. DINGELL], and the ranking minority member of the full Committee on Energy and Commerce, our colleague from North Carolina [Mr. BROYHILL].

This rule is very fair in that it waives any points of order so that the compromise bill developed by the Committee on Energy and Commerce and the Committee on Public Works and Transportation can be offered as an amendment in the nature of a substitute of H.R. 2817.

The rule is open to any germane amendments which might be offered to the programmatic titles of the bill, which are under the jurisdiction of the Committee on Energy and Commerce.

No Member's rights to offer germane amendments to these titles will be denied.

Mr. Speaker, the compromise amendment to H.R. 2817, developed jointly by the Energy and Commerce and Public Works Committees, is a very sound piece of legislation. The concerns of a broad range of interests were considered, including the views of the Committee on the Judiciary and the Committee on Merchant Marine and Fisheries.

There are several programmatic amendments, however, that may be offered today which, if passed, would greatly cripple the strong program we have developed in this bill.

One amendment would give States carte blanche authority to require all sorts of State and local permitting before a remedial action takes place. This will severely hamper cleanups and permit local road blocking. This bill has more than adequate provisions for State participation in cleanup decisions.

Expected amendments to establish very broad and detailed inventory requirements for emissions from industrial facilities would defeat the purpose of our comprehensive community right-to-know program. We want citizens to be aware of the hazards which may be posed by the presence of chemicals in their communities but not impose overly burdensome, impossible, unreliable monitoring requirements on America's industry that will overwhelm local emergency response officials with useless detail.

A Federal facilities amendment may be offered which would actually authorize EPA to sue other Federal agencies. This makes very little sense and ought to be defeated.

Finally, there will be a Federal cause of action amendment, to allow citizens to sue in Federal court to recover damages for potential bodily injury alleged to be due to exposure to hazardous substances.

This amendment was wisely rejected by this House last year and should be again this year. This is a cleanup statute; a cleanup statute and not a new avenue to bog down Federal court dockets.

Mr. Speaker, these are but a few of the bad amendments which may be offered today. Of course, even a good bill can be improved, and we will see some amendments today that I plan, along with others, to support; but overall, I think that the document which we will be deliberating on later today is an excellent bill, and I urge my colleagues to keep its framework intact.

I look forward to quick passage of this important legislation.

Mr. PEPPER. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Texas [Mr. ANDREWS].

Mr. ANDREWS. Mr. Speaker, I rise in strong support of the rule on H.R. 2817, the bill before us today to reauthorize the Superfund Program. While I will oppose some amendments which the rule allows, consideration of H.R. 2817 this session—as well as the substitute bill which has been worked out to amend it—is of critical importance to the future success of the program.

It is well known that the Superfund Program has been on hold for months pending a resolution of the many issues associated with the reauthorization debate. This has had a weakening effect on the program and promises to further debilitate it if we do not move forward now. The task before us in cleaning up our Nation's thousands of Superfund sites is truly monumental: defeat of this rule would put consideration of Superfund off for another year, a year neither the program nor this Nation can afford.

Thanks to the efforts of leaders and staff within the Public Works and Transportation Committee and the Energy and Commerce Committee, we have before us today—given passage of this rule—a genuine agreement, reached in the true spirit of compromise by Members from across the political spectrum and from both sides of the aisle. If we wait, we may not have such a product again. And that would be a true loss to Members of this body, to the program, and to the citizens of this country who deserve better. To vote against the rule today would be to reject the many hours of hard work, the commitment and dedication of the members and staff who have labored to put together the best possible bill for our consideration today.

I will vote against the Downey and Duncan amendments to title V. I believe they both would worsen our trade imbalance by making U.S. products less competitive in world markets and create further inequities for refining States like my own which already pay the bulk of Superfund taxes. Nevertheless, the question of how to finance a $10 billion Superfund is a difficult one, and should be decided through the kind of amendments this rule envisions.

For these reasons, I urge a "yea" vote on the rule.

Mr. QUILLEN. Mr. Speaker, I have two other requests for time, but the gentlemen are not here at this time, if the gentleman from Florida would desire to yield time at this time.

Mr. PEPPER. Mr. Speaker, I yield 1 minute to the gentleman from Washington [Mr. SWIFT].

(Mr. SWIFT asked and was given permission to revise and extend his remarks.)

☐ 1215

Mr. SWIFT. Mr. Speaker, I was an enthusiastic original cosponsor of the Florio bill. I was and am an enthusiastic supporter of the bill that was reported from Energy and Commerce. It was a good bill. The bill as it was reported from the Public Works Committee had many aspects that were excellent, and I am delighted to say that the compromise that has been worked out is very good. The point is, there are a lot of ways to skin a cat, and sometimes in this instruction we get a little territorial or we get a little tied up in our particular scheme for skinning a cat. Often the public interest goes winging away as we sit down and fight about whether we are going to skin that cat "my way" or "your way."

The fact is, we have behaved, I think in a very good way here. We have sat down and worked out our differences. We have come up with a bill that is going to do the job for the American public. It is time to set aside whether "your plan" or "My plan" or somebody else's plan was in some tangential way a little bit better or a little bit worse, and get on with it. This rule will do that. It will allow us to implement the compromise that has been worked out and pass good legislation for the American public, and I urge a "yes" vote on the rule.

Mr. QUILLEN. Mr. Speaker, I yield myself as much time as I may consume.

Mr. Speaker, I urge adoption of the rule. I think it is very critical that we extend the taxing provisions of the Superfund and the authorization. I would caution the membership of the House that even though the committees have reached a compromise this is an open rule on all parts of the bill except the tax provisions. In the closing hours of this year and before Christmas, let us not delay by amendments which are not substantive, let us not delay just because of the desire to speak out; let us get down to business and pass this legislation today as I believe it to be critical.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. PEPPER. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey [Mr. FLORIO].

(Mr. FLORIO asked and was given permission to revise and extend his remarks.)

Mr. FLORIO. Mr. Speaker, I would like to identify with the remarks of the gentleman from Washington [Mr. SWIFT], who pointed out the importance of going forward in a cooperative way, to offer my congratulations to the Rules Committee for their role in assisting to craft this rule and bring the parties together and likewise to offer high congratulations to all who played a part in putting forward this very good package we will be bringing to the House floor in a very short period of time.

It is a strong piece of legislation, one that we can all be proud of and all who played a role in bringing it together, particularly Chairman DINGELL, Chairman HOWARD, Chairman ROE, and all the other people who played a part in bringing about this end result.

Mr. PEPPER. Mr. Speaker, I yield 2 minutes to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. I thank the chairman.

Mr. Speaker, while we have been quarreling for a number of weeks and months now over the particulars of the bill that we would bring out, I must say that we have, I think, come to some good terms. Mr. FLORIO is correct, we have ironed out an awful lot of differences that existed in the earlier discussion, and that is to our credit. But we still have work to do on this floor. I think it is important to point out something that is essential to the debate we are going to have today. That is that in Louisiana, as in most States of the Nation, there is a general rule in our codal provision, which says that neighbors are not to use their property so as to damage the property or the lives of other neighbors. That is what we are talking about here today. We are meeting as a legislative body today to address a wrong, the neglect which has been committed by some of us, as neighbors, upon other neighbors in our great society. What we are doing as a body now is addressing the wrong that has been created over the years where hazardous wastes have been placed indiscriminately around the country and are now endangering the lives and properties of the citizens of this Nation.

Now while we still have some elements to debate on this floor today, particularly who ought to pay the cost of redressing that wrong, how that cost ought to be properly spread around the country, I think it is important to note that this bill does something the last Superfund does not do. It moves us in the direction of cleanup rather than litigation. It moves us in the direction of redressing that wrong rather than constantly arguing about who is responsible for it. The truth is, we all are. We have benefited from the products of our great manufacturing establishments in America. We have all benefited from those products as good neighbors. We have all caused each other harm and neglect because we have not taken care of the wastes that have been produced in the manufacture of those products. We all owe an obligation to one another now to come forward with a plan to redress that wrong.

That is what Superfund is essentially all about.

I want to commend the Committee on Rules, the Committee on Ways and Means, the Committee on Energy and Commerce, the Committee on Public Works and Transportation, the Committee on the Judiciary, the Committee on Merchant Marine and Fisheries; all those and others who have worked on this program. We still have a few items to debate, but we are awfully, awfully far along the way of providing a good bill to address those wrongs. I commend the rule to the House.

Mr. PEPPER. Mr. Speaker, I have no further requests for time and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WALKER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 376, nays 33, not voting 25, as follows:

[Roll No. 432]

YEAS—376

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Badham
Barnard
Barnes
Bartlett
Bateman
Bates
Bedell
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Biaggi
Bilirakis
Bliley
Boehlert
Boggs
Boland
Boner (TN)
Bonior (MI)
Bonker
Borski
Bosco
Boucher
Boxer
Breaux
Brooks
Broomfield
Brown (CA)
Broyhill
Bruce
Bryant
Burton (CA)
Burton (IN)
Bustamante
Byron
Callahan
Campbell
Carney
Carper
Carr
Chandler
Chapman
Chappell
Clay
Coats
Coelho
Coleman (MO)
Coleman (TX)
Collins
Conte
Conyers
Cooper
Coughlin
Courter
Coyne
Craig
Crockett
Daniel
Dannemeyer
Darden
Daschle
de la Garza
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart (OH)
Eckert (NY)
Edgar
Edwards (CA)
Emerson
English
Erdreich
Evans (IA)
Evans (IL)
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Fowler
Frank
Franklin
Frenzel
Fuqua
Gallo
Garcia
Gaydos
Gejdenson
Gibbons
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Gray (IL)
Green
Gregg
Grotberg
Guarini
Gunderson
Hall (OH)
Hall, Ralph
Hamilton
Hammerschmidt
Hatcher
Hawkins
Hayes
Hefner
Hendon
Henry
Hertel
Hiler
Hillis
Holt
Hopkins
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kasich
Kastenmeier
Kemp
Kennelly
Kildee
Kindness
Kleczka
Kolbe
Kolter
Kostmayer
Kramer
LaFalce
Lagomarsino
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Lloyd
Long
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
Lungren
MacKay
Madigan
Manton
Markey
Martin (IL)
Martin (NY)
Matsui
Mavroules
Mazzoli
McCain
McCandless
McCloskey
McCollum
McCurdy
Mc[illegible]de
M[illegible]en
McGrath
McHugh
McKernan
McMillan
Meyers
Mica
Mikulski
Miller (CA)
Miller (WA)
Mineta
Mitchell
Moakley
Molinari
Mollohan
Montgomery
Moore
Moorhead
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Natcher
Neal
Nichols
Nielson
Nowak
O'Brien
Oakar
Oberstar
Obey
Olin
Owens
Oxley
Packard
Panetta
Parris
Pashayan
Pease
Penny
Pepper
Perkins
Petri
Pickle
Porter
Pursell
Quillen
Rahall
Rangel
Ray
Regula
Reid
Ridge
Rinaldo
Ritter
Robinson
Rodino
Roe
Roemer
Rogers
Rose
Rostenkowski
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Rudd
Russo
Sabo
Savage
Saxton
Schaefer
Scheuer
Schneider
Schroeder
Schuette
Schulze
Schumer
Seiberling
Sensenbrenner
Sharp
Shelby
Shuster
Sikorski
Siljander
Sisisky
Skeen
Skelton
Slattery
Slaughter
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Snyder
Solarz
Spence
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Sundquist
Sweeney
Swift
Swindall
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Walgren
Watkins
Waxman
Weaver
Weiss
Wheat
Whitehurst
Whittaker
Whitten
Wirth
Wise
Wolf
Wolpe
Wortley
Wright
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)
Young (MO)
Zschau

NAYS—33

Archer
Armey
Barton
Boulter
Brown (CO)
Chappie
Cheney
Cobey
Coble
Combest
Crane
Daub
DeLay
Dornan (CA)
Dreier
Edwards (OK)
Fiedler
Gekas
Hansen
Hartnett
Hunter
Lewis (CA)
Loeffler
Mack
Marlenee
Monson
Roberts
Smith, Denny (OR)
Strang
Stump
Vucanovich
Walker
Weber

NOT VOTING—25

Addabbo
Clinger
Davis
Dellums
Frost
Gephardt
Gilman
Gray (PA)
Heftel
Martinez
McKinney
Michel
Miller (OH)
Moody
Nelson
Ortiz
Price
Richardson
Roth
Shaw
Shumway
Solomon
Whitley
Williams
Wilson

□ 1230

Mr. PORTER changed his vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

* * * * * * * * *

p. H11069

SUPERFUND AMENDMENTS OF 1985

The SPEAKER pro tempore. Pursuant to House Resolution 281 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2817.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2817) to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes, with Mr. HOYER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Michigan [Mr. DINGELL] will be recognized for 30 minutes, the gentleman from New York [Mr. LENT] will be recognized for 30 minutes, the gentleman from New Jersey [Mr. HOWARD] will be recognized for 30 minutes, the gentleman from Kentucky [Mr. SNYDER] will be recognized for 30 minutes, the gentleman from Illinois [Mr. ROSTENKOWSKI] will be recognized for 30 minutes, the gentleman from Tennessee [Mr. DUNCAN] will be recognized for 30 minutes, the gentleman from Kansas [Mr. GLICKMAN] will be recognized for 15 minutes, the gentleman from Ohio [Mr. KINDNESS] will be recognized for 15 minutes, the gentleman from North Carolina [Mr. JONES] will be recognized for 15 minutes, and the gentleman from New York [Mr. LENT] again will be recognized for 15 minutes.

The Chair recognizes the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Chairman, I yield myself such time as I may consume.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Chairman, H.R. 2817 amends the Comprehensive Enviromental Response Compensation and Liability Act [CERCLA] or as we refer to it, the Superfund bill. This bill will provide $10 billion in additonal funding over the next 5 years to clean up the Nation's worst abandoned hazardous waste sites and uncontrolled leaking underground storage tanks.

Superfund is one of this Nation's most important environmental programs designed to protect human health and the environment. It is also the most beleaguered program the Environmental Protection Agency [EPA] administers. When enacted, H..R 2817 will give EPA the flexibility to revitalize the Superfund Program, ensure cleanup of abandoned hazardous waste sites, and protect communities now exposed to the dangerous and toxic chemicals that have been dumped at those sites.

Before I continue my general discussion of the legislation itself, there are a few specific matters which I would like to address.

No change has been made in the standard of liability that applies under CERCLA. As under section 311 of the Federal Water Pollution Control Act, 33 U.S.C. 1321, liability under CERCLA is strict, that is, without regard to fault or willfulness. Where appropriate, liability under CERCLA is also joint and several, as a matter of Federal common law.

Explicit mention of joint and several liability was deleted from CERCLA in 1980 to allow courts to establish the scope of liability through a case-by-case application of "traditional and evolving principles of common law" and preexisting statutory law. The courts have made substantial progress in doing so.

The uniform Federal rule on joint and several liability established in the case of *United States v. Chem-Dyne Corporation*, 572 F. Supp. 802 (S.D. Ohio 1983), is correct and should be followed. It is unnecessary and would be undersirable for Congress to modify this uniform rule. Thus, nothing in this legislation is intended to change the application of the uniform Federal rule of joint and several liability enunciated by the Chem-Dyne court.

The Environmental Protection Agency Administrator in testimony on this legislation described aggressive enforcement of the law, including the use of strict, joint and several liability, as the very heart of EPA's success in promoting private party cleanups. While Superfund's liability provisions may be considered extraordinary, the hazardous waste problem in this country is also extraordinary. Estimates of the number of hazardous waste sites in this country to be cleaned up range well over 20,000. During the next 5 years, EPA plans to begin cleanup work at approximately 1,000 national priority sites. According to EPA's Administrator, it is only through the effective use of strict, joint and several liability that EPA will be able to achieve a significant level or private party involvement in our priority cleanup program.

Further, the settlement provisions in this legislation should greatly encourage and facilitate the cleanup of hazardous waste sites by responsible parties pursuant to negotiated settlements with the Environmental Protection Agency. However, the emphasis in the legislation on settlement should not be construed to mean that EPA should settle under all circumstances. The settlement provisions are not intended to replace or weaken, in any fashion, government enforcement efforts under CERCLA.

They simply complement the enforcement approach, leading to a Superfund Program that is balanced between fund-financed cleanups, negotiated voluntary private party cleanups, and litigation where necessary.

The legislation encourages the Administrator to enter into agreements with potentially responsible parties, but only where it is in the public interest to do so. In this respect, the legislation endorses the EPA settlement policy, which gives the Administrator the discretion he needs to ensure that all settlements are in the public interest. There is no intent to codify the entire EPA settlement policy, however, since the terms needed in particular settlement agreements will vary from case to case and the Administrator may include in each agreement, whenever terms are needed, to ensure that CERCLA goals are met.

Further, the legislation provides procedures for making information available to potentially responsible parties and also establishes discretionary special procedures that the Administrator can choose to use if he thinks they will expedite settlement.

The committee did not include in its substitute for H.R. 2817, as reported by the Energy and Commerce Committee, the amendment to section 107 included in the Energy and Commerce bill that expressly authorized recovery of pre-CERCLA, post-RCRA government response costs. The committee did not include such a provision in its bill because, as with the standard of liability under CERCLA, the courts are currently adequately addressing this issue under CERCLA as enacted in 1980. In addition to recovery under section 107 of CERCLA, the United States may also recover under an equitable restitution theory the response costs it has incurred pursuant to the Solid Waste Disposal Act.

I will now return to my more general comments on the very important legislation we are considering today.

Superfund was passed in 1980 to address what many then believed was a relatively limited problem. The EPA was instructed to find 400 hazardous waste sites. Most people believed that cleaning up a site was relatively inexpensive and involved removing a few containers or scraping only a few inches of soil off the ground. EPA was given $1.6 billion to do the job.

Today, 5 years later, our understanding of the problem posed by abandoned hazardous chemicals is entirely different. The Office of Technology Assessment now estimates there may be as many as 10,000 Superfund sites across the Nation, or an average of 23 sites per congressional district. These sites range from industrial plants to river beds to city dumps where small businesses and households have disposed of solvents, paints and cleaning fluids. We now understand that a cleanup frequently goes far beyond simple removal of barrels. It often involves years of pumping contaminated water from aquifers. The total cost of completing the Superfund Program is estimated to be as much as $100 billion. The total time will be decades.

The resources given to EPA in 1980 were simply inadequate to fulfill the promises that were made to the American people that we would clean up the abandoned hazardous wastes in this country. The sense of urgency about cleaning up each individual site was overwhelmed by the inadequacy of the law and the Agency's funding.

To compound the problem, the program was initially victimized by mismanagement and policies that limited expenditures for site cleanups, in part in an effort to dissuade Congress from extending the funding for the program beyond its scheduled expiration date of October 1, 1985.

As a result of the intensive investigation of the Superfund Program by the Energy and Commerce Committee's Subcommittee on Oversight and Investigations in 1982 and 1983, more than 20 top-level officials, including the Administrator of EPA, resigned or were fired from their jobs. One was convicted of perjury and sent to prison.

Understandably, this gross mismanagement of the program, together with the problems created by limited resources that made fulfillment of our promises to the Nation impossible, have created mistrust in the public and in Congress.

The current reauthorization, coming when it does, forces us to face a very fundamental policy question: How do we ensure the provision of adequate resources in the future while making certain that past mismanagement problems are not repeated?

As reported from the Committee on Energy and Commerce, H.R. 2817 focused on ways to ensure rapid and thorough cleanup of abandoned hazardous waste sites rather than on past mistakes. It was the intent of the committee to facilitate cleanups of hazardous substances by the responsible parties while assuring a strong EPA oversight role with a set of tough legal enforcement standards. Equally important was our committee's determination to involve the communities situated around Superfund sites.

But H.R. 2817 was jointly referred to three committees when it was first introduced. The Committees on Energy and Commerce, Ways and Means, and Public Works and Transportation. When the Committee on Energy and Commerce reported the bill on August 1, 1985, the bill was sequentially referred to the Committees on the Judiciary and Merchant Marine and Fisheries. The Committee on Ways and Means reported the bill on October 28 with the Committees on the Judiciary and Merchant Marine and Fisheries reporting on October 31. The Committee on Public Works and Transportation ordered the bill reported on October 10 and filed its report on November 12, 1985. And, Mr. Chairman, as you well know, other committees took a slightly different approach to achieving the cleanup of hazardous wastes sites than that taken by Energy and Commerce.

During the past several weeks, members and staff of the various committees have been meeting almost continuously to develop a consensus bill. The urgent need for this legislation was the driving force that kept our negotiations going. The funding authority for Superfund expired on September 30. This legislation was desperately needed, and we did not dare delay further. Our negotiations had their ups and downs, but they succeeded. The result is a comprehensive compromise which, I trust, will be approved by an overwhelming majority of our colleagues.

By achieving a compromise on the basic provisions, we have shortened the amount of time that will be needed for floor consideration, thus allowing such consideration to occur prior to the Christmas recess. Moreover, the expedited conference procedure will allow Members of both bodies to begin work on the Superfund issue over the holidays.

I believe that most of us in this House want a strong Superfund bill. I have certainly supported strong Superfund legislation over the years, and so have the overwhelming majority of the members of my committee. The Committee on Energy and Commerce has been the lead committee on this matter, starting with Superfund's initial passage in 1980 and again in 1984. And this year, my committee has put aside many of its own jurisdictional concerns in order to achieve a compromise on this most important legislation. It would have been very simple for those of us on the Committee on Energy and Commerce to remain inflexible, but this would not have served the Nation's overriding interests in the health of our citizens and the quality of our environment.

Mr. Chairman, we need a strong Superfund bill. The legislation before us today is just that. It is a consensus bill that deserves the support of every Member of this body, as evidenced by the bipartisan list of sponsors who have brought it to the floor today—from the leadership of the House to the leadership of every committee and subcommittee that has handled the issue. And it is a bill that we can take to conference with pride.

Mr. Chairman, the procedure before the body has been outlined in the discussion of the rule. The rule is a very simple one.

When the House addresses the question of amendments, an amendment in the nature of a substitute will be considered as offered. This is the consensus bill introduced late yesterday by the distinguished majority leader and the distinguished minority leader, and the leadership of the two principally affected committees, the Committee on Public Works and Transportation and the Committee on Energy and Commerce.

That substitute embodies the goals of the two committees, and also the hopes of the two committees that we will be able to shift from litigation and expenditure to money on lawyers to an effective use of the cleanup process.

It brings the industries affected into the cleanup process at an early time. It sees to it that the necessary steps are taken in a rational and orderly fashion to bring about the needed cleanup. It is, in effect, a means of carrying out the concerns that the committees have developed over the years since the original Superfund bill was enacted.

The situation is a serious one. I would urge my colleagues to attend very carefully to the need to move this legislation forward. I would want my colleagues to understand that early this fall the entire funding process of the Superfund bill lapsed and that now the Environmental Protection Agency is functioning at a very reduced level.

It is urgently necessary, with money running out and the program's momentum being lost that this legislation move forward speedily so that we may effectively cleanup hazardous waste, which is perhaps the largest single environmental problem that we face in this country.

There is an urgent need for full and speedy action by this body. There is no time for delay, and I urge my colleagues to make all haste in the enactment of this legislation and the compromise at the earliest possible moment.

Mr. Chairman, I defer to my distinguished friend, the gentleman from New York [Mr. LENT], the senior member of the subcommittee which considered this, with my commendations for an excellent job well done.

Mr. LENT. Mr. Chairman, I yield myself such time as I may consume.

(Mr. LENT asked and was given permisson to revise and extend his remarks.)

Mr. LENT. Mr. Chairman, first of all, I want to return the compliment to the distinguished chairman, the gentleman from Michigan [Mr. DINGELL], the chairman of the full Committee on Energy and Commerce, for the outstanding leadership that he has demonstrated and the patience that he has shown in shepherding this very important piece of legislation through a very difficult committee process and then a very protracted negotiation process.

Mr. Chairman, the reauthorization of Superfund is the most critical environmental legislation facing this Congress. We are all painfully aware of the need to reauthorize and increase the funding of this program, which expired September 30, 1985, but I want to emphasize that it is not only the fund that must be addressed, we must address and we do address the workings of the program itself.

I do not know anyone, on whatever side of the aisle, on whatever side of any issue with respect to Superfund, who is satisfied with the results of the first 5 years of Superfund. Everyone agrees that improvements are needed. There are differences of opinion, however, and we will learn of some of these differences today, over just what changes might be needed.

Some believe that the Administrator of EPA must have complete flexibility to design and manage the program. On the other hand, there are those who believe that the only way to make the program work is to direct the EPA along some very narrow, some very rigid lines.

The legislation that we bring to the floor today is the result of a broad, bipartisan compromise. This compromise has produced a balance between the need for flexibility on the part of the EPA to develop and manage hazardous waste cleanups and the desire on the part of some to set narrow confines in which the EPA is permitted to operate. While still striking this balance, considerable improvements have been made over the existing program.

First and foremost, the agency is given ample funds to pay for the next 5 years of cleanup activity. National, uniform cleanup standards are incorporated in the legislation. The agency is given reasonable and, I believe achievable annual schedules for the commencement of the initial site studies and for the cleanup itself.

The bill also contains some groundbreaking settlement provisions that are designed to harness the energy and resources of the private sector to undertake cleanup. The substitute contains provisions which will allow citizens to sue in the Federal courts to compel cleanup and which will correct any injustices done by the diverse State statutes of limitations.

□ 1330

Mr. Chairman, I yield 5 minutes to the gentleman from Texas [Mr. FIELDS], a member of the full Committee on Energy and Commerce.

(Mr. FIELDS asked and was given permission to revise and extend his remarks.)

Mr. FIELDS. Mr. Chairman, the timely Cleanup of hazardous waste sites is one of the most significant environmental concerns facing our Nation and my congressional district today. Unfortunately, hazardous waste site cleanup is also one of the most complex problems facing the 99th Congress. We are only beginning to learn the extent of the hazardous waste problem and develop technology to deal effectively with hazardous waste cleanup.

We all agree that hazardous waste sites must be cleaned up as rapidly and effectively as possible. But, how we, in Congress can best craft Superfund legislation to achieve the goals of rapid and effective hazardous waste site cleanups has been a matter of legitimate disagreement.

For the past 7 months, the Energy and Commerce Committee, along with several other House committees, has worked diligently to craft a compromise package which would merit the support of a majority of the House of Representatives.

As with any compromise, the bill before us today will not completely satisfy every Member of Congress. I am not happy with every provision of the compromise package. I am concerned that the funding level of H.R. 2817 is too high, the scope is too broad and the incentives for responsible parties to settle, not litigate, are not strong enough.

Further, I strongly believe the expanded citizen suits provision in the compromise is unwise. Allowing citizens to sue in Federal court when a release or threatened release of a hazardous substance presents an "imminent and substantial endangerment" to human health and environment will effectively take management of hazardous waste site cleanup away from the EPA and turn it over to every Federal district court judge in the Nation. Valuable time and money which should be spent on hazardous waste site cleanup will instead be spent on more litigation—trying to define and discern what imminent and substantial endangerment means.

Despite my reservations, I believe H.R. 2817 is a reasonable compromise. And, more importantly, it is workable. Because, when all the rhetoric on Superfund has ended, the bill Congress passes must be implemented in the real world to cleanup hazardous waste sites.

H.R. 2817 properly emphasizes the cleanup of hazardous waste sites as the primary goal of the Superfund Program. The bill's authors have resisted the temptation to make Superfund an environmental Chrismas tree.

H.R. 2817 takes some major steps toward increasing voluntary settlement among responsible parties, rather than increasing expensive litigation, by providing EPA with discretionary authority to grant releases from liability under certain circumstances and by codifying EPA's settlement procedures which give responsible parties the assurance that set guidelines will be followed in the settlement process.

H.R. 2817 requires cleanups to achieve the standards of other environmental laws when those laws are relevant or appropriate but does not eliminate EPA's flexibility in selecting remedies which are appropriate for widely divergent sites with widely divergent problems.

The bill puts the heat on EPA to accelerate cleanups but avoids unattainable schedules which would only damage the Superfund Program.

H.R. 2817 ensures that citizens and local health and safety officials will have access to vital health information from companies which produce or utilize potentially hazardous chemicals, but does so in a way which is reasonable and not overly burdensome for companies.

Finally, the bill spreads the tax burden for hazardous waste site cleanup more fairly. Currently 12 companies pay approximately 70 percent of Superfund taxes, even though EPA has identified over 4,000 businesses and entities as potential contributors at hazardous waste sites.

Texas pays almost 60 percent of the current petrochemical feedstocks tax and 28 percent of the taxload levied against crude oil. My district, alone, pays a full 9 percent of all feedstocks tax. Combining feedstock and crude oil taxes, Texas pays close to 50 percent of all taxes lievied for hazardous waste cleanup.

As hearings in the Energy and Commerce Committee so vividly highlighted, the trade balance of the U.S. petrochemical industry is being squeezed already. An unbearable tax burden on the petrochemical industry will further hamper the industry's international competitiveness, increase our trade deficit, and result in lost jobs for American workers.

The Downey amendment, which will be before us later in debate, would increase the petroleum tax 1,500 percent and increase chemical feedstocks taxes by 66 percent. These increases coupled with a $2 billion waste-end tax will cripple the U.S petrochemical industry. I urge my colleagues to soundly reject the Downey proposal.

In conclusion, I believe H.R. 2817 strikes a reasonable balance between environmental and economic concerns. And, it does so without compromising the health and safety of the American public. I urge my colleagues to support the bill in its present form and to reject undesirable amendments.

Mr. DINGELL. Mr. Chairman, at this time I have no requests for time, and I reserve the balance of my time.

Mr. LENT. Mr. Chairman, I yield 3 minutes to the gentleman from Washington [Mr. MILLER].

(Mr. MILLER of Washington asked and was given permission to revise and extend his remarks.)

Mr. MILLER of Washington. Mr. Chairman, today we take another step toward a cleaner and safer environment. Today, we finally take up the Superfund bill.

The message from across the country is clear. This is the time to establish tough standards and tough schedules. This is the time to expedite the cleaning up of hundreds of sites ranging from Eagle Harbor in my district to the Butler Tunnel site which was reactivated by Hurricane Gloria. The compromise worked out by the leaders of the five committees goes a long way toward achieving this goal.

This Superfund bill, Mr. Chairman, requires the Environmental Protection Agency to begin construction at 600 sites over the next 5 years. This bill will help clarify Federal environmental standards by linking major laws like the Clean Water Act to the standards used to evaluate Superfund sites. This bill will also allow meaningful suits by citizens who face "imminent and substantial endangerment" from toxic wastesites. Last, this bill will provide the needed funds to ensure that we get a real start on cleaning up toxic dumps.

Mr. Chairman, I urge my colleagues to support this strong Superfund bill.

Mr. DINGELL. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from Ohio [Mr. ECKART] who is a major architect of the language in the legislation in the Committee on Energy and Commerce.

(Mr. ECKART of Ohio asked and was given permission to revise and extend his remarks.)

Mr. ECKART of Ohio. Mr. Chairman, as primary sponsor of H.R. 2817, the Superfund amendments of 1985, I am very pleased to be able to come before you today, with my colleagues from the Energy and Commerce Committee, the Public Works and Transportation Committee, and the Committees on the Judiciary and Merchant Marine and Fisheries, and report to you that we have reached a sound, comprehensive compromise on the Superfund reauthorization bills reported from all committees.

Mr. Chairman, the compromise package we bring to you today is the result of countless hours of intensive, difficult negotiations. Particularly with respect to the Committees on Energy and Commerce, and Public Works and Transportation. Several areas of initial disagreement were hammered out. It was tough going. But, as we promised you and all our colleagues in the House, we were committed to resolving these issues so that we might bring to the House floor a united position on this most important environmental legislation of the decade. We have succeeded.

I urge my colleagues to support this bill and proceed expeditiously now to enactment of this most important environmental legislation.

Mr. Chairman, as I have noted, the compromise package before us today is the product of intense negotiations among all parties concerned, both within this body and without. There is no finer example of the success of those deliberations than the amendment embodied in section 121—cleanup standards—relating to the issue of State involvement in the Superfund process.

Mr. Chairman, this amendment is

the result of untold hours of discussion and debate among representatives of the Federal Government, the States, and members of several House committees. Represented at countless meetings convened on this issue were the National Governors' Association, the Association of State and Territorial Solid Waste Management Officials, the States of Illinois, New Hampshire, Florida, Colorado, New Mexico, Minnesota, and my own State of Ohio. From the Federal perspective, we had the Environemntal Protection Agency, the Departments of Justice, Defense, and Energy. And finally, we heard from the Committees on Armed Services, Public Works and Transportation, and Energy and Commerce. The staffs and members of these committees provided advice and counsel to the State and Federal participants in all the discussions. The ultimate goal of all concerned was to fashion a statutorily mandated procedure whereby the legitimate and important interests of the States in the Superfund cleanup process were recognized, protected, and enforced, and at the same time to protect the integrity of the Federal Superfund Program so that it can move forward expeditiously to achievement of its purpose—clean up the hazardous waste that threatens the health and environment of the citizens in all States of our Nation.

Mr. Chairman, I believe that all concerned succeeded admirably in these goals. The provisions for mandated State involvement adopted in this compromise package represent important new strides in the hazardous waste cleanup effort. Under these provisions, the administrator is required to promulgate regulations providing for extensive State involvement in the initiation, development, and selection of all cleanup action. At a minimum, these regulations must include:

State involvement in decisions whether to perform preliminary assessments and site inspections at possible hazardous waste dumpsites.

State concurrence in listing sites on the national priorities list [NPL].

State concurrence in deleting sites from the NPL.

State participation in long-term planning process for all remedial sites within the State.

A reasonable opportunity for States to review and comment on:

The remedial investigation and feasibility study and all data and technical documents leading to its issuance;

The planned remedial action identified in the RI/FS;

The engineering design following selection of the final remedial action; and

Other technical data and reports relating to implementation of the remedy.

In addition, this provision includes a statutorily mandated presumption that all State cleanup standards automatically apply to Superfund cleanups. This presumption may only be defeated in a narrow, specifically enumerated set of circumstances. States are given for the first time an absolute right to have EPA's decision on State standards reviewed by a Federal court. Only if a court finds that, under one of the limited circumstances I just mentioned, the EPA's decision not to apply the State standard was supported by the evidence and in the best interest of protecting human health and the environment will a State be required to pay the additional cost of having the cleanup action meet the State standard. Important to note here is that, even if a court finds that the EPA Administrator's decision is justified, the State still has an absolute right to insist that its standards be met.

Further, States are allowed to require that permits be issued for Superfund cleanups under the State programs authorized by the Federal Clean Air Act, the Safe Drinking Water Act, and State groundwater protection programs. These permits will be issued by the State in accordance with the remedial action mutually agreed upon by the State and the EPA, under the new regulations for the State participation in selection of that remedial action. The State has an absolute right to enforce the terms of its permit against potentially responsible parties—or Federal agencies in the case of Federal hazardous waste sites—in Federal court.

In the case of Superfund enforcement actions against potentially responsible parties, States must be given an opportunity to participate in negotiations between EPA and the responsible parties regarding all aspects of the proposed cleanups, and to become a signatory to the consent decree which must be lodged with the court upon settlement. The State, of course, has the right to enforce the terms of the consent decree in court.

Mr. Chairman, these provisions establish a fair, enforceable process to protect the rights of all States, and thus their citizens, in the Superfund cleanup process. I am very proud of the fine work we have accomplished on this most important issue, and I urge my colleagues to give it their well-deserved support.

Mr. Chairman, another issue of crucial importance to the success of the Superfund Program is the ability of the EPA and the Justice Department to force responsible parties to undertake cleanup actions. The key element of the enforcement program is the Superfund liability scheme of strict, joint, and several liability. H.R. 2817 absolutely protects this standard of liability. Under this legislation, no change has been made in the standard of liability that applies under CERCLA. As under section 311 of the Federal Water Pollution Control Act, 33 U.S.C. 1321, liability under CERCLA is strict, that is, without regard to fault or willfulness. Where appropriate, liability under CERCLA is also joint and several, as a matter of Federal common law.

Explicit mention of joint and several liability was deleted from CERCLA in 1980 to allow courts to establish the scope of liability through a case-by-case application of "traditional and evolving principles of common law" and preexisting statutory law. (See 126 CONGRESSIONAL RECORD H11787 (Daily Ed. Dec. 3, 1980) (Statement by Mr. FLORIO); 126 CONGRESSIONAL RECORD S14967 (Daily Ed. Nov. 24, 1980) (Statement by Senator STAFFORD).) The courts have made substantial progress in doing so. The Committee on Energy and Commerce and the other committees involved in this bill fully subscribe to the reasoning of the court in the seminal case of *United States* v. *Chem-Dyne Corporation*, 572, F. Supp. 802 (S.D. Ohio 1983), which has established a uniform Federal rule allowing for joint and several liability in appropriate CERCLA cases as that court held:

> A reading of the entire legislative history in context reveals that the scope of liability and term joint and several liability were deleted to avoid a mandatory legislative standard applicable in all situations which might produce inequitable results in some cases. (Citations omitted.) Rather, the term was omitted in order to have the scope of liability determined under common law principles, where a court performing a case by case evaluation of the complex factual scenarios associated with multiple-generator waste sites will assess the propriety of applying joint and several liability on an individual basis. (*U.S.* v. *Chem-Dyne*, supra, at 808).
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> (W)hen two or more persons acting independently caused a distinct or single harm for which there is a reasonable basis for division according to the contribution of each, each is subject to liability only for the portion of the total harm that he had himself caused. But where two or more persons cause a single and indivisible harm, each is subject to liability for the entire harm. Furthermore, where the conduct of two or more persons liable under (section) 9607 has combined to violate the statute, and one or more of the defendants seeks to limit his liability on the ground that the entire harm is capable of apportionment, the burden of proof as to apportionment is upon each defendant. 572 F. Supp. at 810 (citation omitted).

This uniform Federal rule on joint and several liability is correct and should be followed. It is unnecessary and would be undesirable for Congress to modify this uniform rule. Thus, nothing in this bill is intended to change the application of the uniform Federal rule of joint and several liability enunciated by the Chem-Dyne court.

A third important element of the Superfund Program is the way in which EPA determines "how clean is clean" in selecting and implementing a cleanup remedy. For this reason, this bill contains a section devoted specifically to establishing cleanup standards, section 121, and encouraging whenever possible the implementation of permanent cleanup measures at hazardous waste facilities.

Under these provisions, EPA is required, to the maximum extent practicable, to implement a cleanup remedy which will achieve permanent destruction of the hazardous substances involved. I am convinced that only in this way will we ever be able to finally solve the hazardous waste problem and prevent the irreversible poisoning of our Nation's environment, particularly its ground water. This is so important that, for sites where a permanent remedy is not implemented, we have required that EPA and the States assure that those sites are periodically monitored and reviewed to determine whether the technology allowing for a permanent remedy has yet been developed, and if so, to implement that remedy when necessary to protect human health and the environment. This must be a paramount priority in EPA's implementation of the provisions relating to cleanup standards.

Another issue that has been the subject of much debate over "how clean is clean" is the applicability of water quality criteria under the Federal Water Pollution Control Act to Superfund cleanups. Under this provision, the Administrator of EPA must apply water quality criteria, which are health-based standards existing for about 120 hazardous substances, whenever they are relevant and appropriate under the circumstances presented by the release into the environment at the facility. It is important that these criteria, along with other standards promulgated under the Federal environmental laws, be applied to Superfund cleanups in a uniform manner so as to assure the maximum protection of human health and the environment possible, consistent with all requirements of section 121.

Working hand in hand with this bill's provisions on cleanup standards are two other provisions—requirements for public participation in selection of the cleanup measure—section 117—and the implementation of new health assessment and protection authorities—section 116.

Communities affected by Superfund sites will demonstrate much stronger support for actions necessary to clean up those sites if the community is involved from the beginning in determining the actions which will be necessary to complete the cleanup.

The bill requires the Administrator to provide a reasonable opportunity for public comment on any proposed plan for remedial action before such plan is made final, including holding a public meeting and keeping a transcript of the proceeding. The Administrator is also required to publish an explanation of his reasons if he or she rejects significant aspects of such comments upon adopting a final plan. The section further provides that if any response action is taken pursuant to a court order or consent decree which differs in significant respects from the final remedial plan adopted by the Administrator, he or she shall publish an explanation of such differences. The section defines publication as including, at a minimum, publication in a major local newspaper of general circulation.

The provision is not intended to be unreasonably burdensome for the Administrator. Published information must be adequate to inform the community of the proposed remedial action but the committee does not intend that the Administrator must publish in local publications every shred of evidence or communication which is available. It is intended, however, that all information be made available to the community, and the public meeting be held in a convenient, central location so that individuals who choose to pursue a full understanding of the proposed remedial plan and its alternatives may do so.

Under this section, the committee also gives the Administrator authority to make technical assistance grants to communities. Such grants are limited to one for each facility listed on the national priorities list, and the group seeking the grant must provide one-fifth of the funds necessary for the grant project, unless the Administrator waives this matching requirment on the basis of the requesting groups' financial need. The amount of the grant is limited to $25,000, except that the Administrator may allocate more funds where he or she determines a higher amount is necessary to carry out the purpose of this section.

Such grants could play a significant role in reducing the level of distrust among communities, responsible parties, and the governmental agency taking the lead in cleanup. The intent of the provision is to allow communities affected by Superfund facilities on the national priorities list to hire a competent scientific or other expert consultants to review and assess data and information which has been prepared by the EPA Administrator with respect to the facility.

Among the documents most important for communities to understand will be assessments, conducted by the Agency for Toxic Substances and Disease Registry at HHS, of the health risks posed by the hazardous substances, pollutants, and contaminants found at the facility. Under this new provision, health assessments will now be required to be performed at virtually every site on the national priorities list, as well as sites which may not be on the list, but which nonetheless may pose a danger.

The information developed in these health assessments on the links between exposure to hazardous substances and adverse human health effects is crucial to the sound implementation of the Superfund Program. Currently, we are plagued by uncertainty about what is happening to the health of our Nation's citizens as a result of what they are drinking in their water and breathing in their air because of hazardous substance releases. We know it isn't good, but we do not know just how bad it is. We desperately need this information in order to better determine how to respond to the problems posed by hazardous waste. Implementation of the health assessments provision of H.R. 2817 will assure that finally we begin to collect this vital, concrete evidence.

Finally, there is one last issue I wish to specifically address. The Superfund reauthorization bill approved by the Energy and Commerce Committee contained a provision which expressly made responsible parties liable for Government response costs incurred before the passage of CERCLA in 1980 but after the passage of RCRA in 1976. The bill that this House is being asked to approve does not include such a provision. The provision was not included because, as with the standard of liability under CERCLA, that is joint and several liability. The courts are currently addressing this issue under the law as enacted in 1980, and we are moving in the right direction in holding polluters accountable.

With respect to section 107, the liability section, I would also like to add that we are pleased with the way in which most courts have been construing the limited nature of the defenses the Congress has made available under section 107(b). The listed defenses are the only defenses which are available to avoid liability under section 107(a). There should be no other defenses, including equitable defenses, that defeat liability under sections 106 and 107 of the act. One of our principal goals in this reauthorization is to maintain and build upon the effective liability scheme which applies under CERCLA.

Mr. Chairman, I have not attempted to address every major issue embodied in this compromise bill. Several others are of great importance to me, and I will speak on those, along with my colleagues from the other committees, as they arise during today's consideration. Suffice it to say that I am very proud to be the primary sponsor of this legislation. It is a fine product, sound environmentally and programmatically. It deserves the wholehearted support of this body.

□ 1345

Mr. LENT. Mr. Chairman, I have no further requests for time at this time, and I reserve the balance of my time.

Mr. DINGELL. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from New Jersey [Mr. FLORIO], the chairman of the subcommittee of our committee.

(Mr. FLORIO asked and was given permission to revise and extend his remarks.)

Mr. FLORIO. Mr. Chairman, I am pleased to rise today in support of this consensus piece of legislation that is the product of many hours of hard work by Members on both sides of the aisle throughout the House.

As we are all aware, this has been a controversial bill. Unfortunately most of the controversy arises because of the dismal performance of the Environmental Protection Agency. If EPA were aggressively implementing the existing law, many of the provisions of this bill would be unnecessary. But EPA has performed poorly and any Superfund reauthorization must establish standards and goals for cleaning up the Nation's hazardous waste sites.

Five years ago, the Congress passed the original Superfund law that committed $1.6 billion to the cleanup of abandoned hazardous waste sites. EPA has listed more than 800 sites as national priority sites for cleanup, out of the 23,000 such facilities that are known to exist across the country.

Unfortunately, after 5 years of EPA effort, not a single site on the National Priorities List has been cleaned up. EPA's record on all other parts of this program is equaly dreadful.

I believe firmly that we must set this program straight, and the only way to do that is to give the Agency firm direction and requirements that it must meet. To do less is simply to forsake any hope that we will make meaningful progress in cleaning up hazardous waste sites around the country.

If we have learned anything from the experiences of the past 5 years, it is that without a clear directive from Congress the EPA will do nothing. Leaving the agency to follow its preferences is not helpful to the environment, to public health, or even to the companies whose money is being used to pay for these cleanups. If someone is not performing up to expectations, there is no alternative but to establish requirements for them to meet.

I have stated repeatedly that a credible effort to reform the Superfund Program must contain, at a minimum, the following provisions:

A strict, mandatory annual schedule for the initiation of cleanup at priority sites;

Uniform national cleanup standards to determine when work at a site has been sufficient to protect human health and the environment. Such standards must mandate permanent treatment of Superfund wastes whenever such technologies are feasible and achievable;

Establishment of a citizen's right to sue polluters for cleanup when EPA and the States are not acting at a site;

Prohibition of sweetheart deals in which polluters' future liability for undetected contamination is waived and the fund is left to absorb all cleanup costs;

Creation of a cleanup program for leaking underground gasoline storage tanks which preserves appropriate liability for the major oil companies that often own and operate such tanks; and

Establishment of a strong and effective community right to know program which requires the disclosure of basic information about the nature and scope of toxic emissions from operating chemical plants.

I am extremely pleased that this compromise incorporates the items which I have mentioned. There are strong annual schedules, real cleanup standards, liability for future releases, a strong underground tank program, citizens' suits, and a community right-to-know program.

I believe the bill can be improved in some areas, and I think there will be various amendments offered which address these important concerns and deserve our support. But there is no question that we can be proud of the basic bill we are considering today.

I would like to congratulate all involved in producing this agreement. Chairman DINGELL has worked diligently to reach accommodation. Chairman HOWARD and Congressman ROE have worked mightily over the past several months, in their committee and in these negotiations, and I think the compromise they have produced is as good a product as we could hope for. Mr. LENT, Mr. SNYDER, Mr. STANGELAND, and Mr. BROYHILL have worked hard to reach this compromise.

I also believe that all the Members, and there are many, who have worked so hard over the last several months to ensure that the House considers a bill that can be described as good for the environment, deserve congratulations for this compromise. Nearly all the issues we set out to include in a Superfund reauthorization are included in this compromise, and members can be fully satisfied with the work they have done.

One key issue that we will have an opportunity to vote on today is how we are to fund the $10 billion effort called for by this legislation. As members know, the Ways and Means Committee narrowly approved a value-added tax to support Superfund. This approach is opposed by the administration, by many industries and by the environmental community because it is a regressive tax that does not target the obligation to pay for cleanup on those firms that created the problem in the first place.

Mr. DUNCAN will offer an amendment which is unfortunately a disaster for Superfund. It means a smaller Superfund, fewer cleanups and more disease and destruction across the country. The program we are considering today requires $10 billion, and the Duncan amendment simply does not provide it.

Mr. DOWNEY will offer an amendment to the bill which would restore the principle of "polluter pays" to the funding mechanism we will use to support Superfund. Chairman ROSTENKOWSKI strongly supports the Downey amendment, as do a broad-based and unusual coalition of industry and environmental representatives.

The President has threatened to veto any Superfund legislation that relies on a broad-based tax. To safeguard the future of the program and to restore the important principle of "polluter pays," I urge my colleagues to support the Downey amendment.

Mrs. ROUKEMA. Mr. Chairman, it is the unfortunate reality that nothing has changed since I took to the floor of this House earlier this year to urge swift enactment of Superfund reauthorization legislation. Superfund continues to be the highest environmental priority for the people of

New Jersey and the citizens of our Nation. The gravity of the National Toxic Waste Program demands that Congress move swiftly to enact an effective reauthorization bill.

I deeply regret that Congress has been racked by delay and indecision over the past several months on this issue. But I now urge my colleagues to put aside their personal differences and, in a spirit of compromise, adopt strong Superfund reauthorization legislation and do it now! Superfund reauthorization cannot wait until next year.

At thousands of sites across the country, toxic chemcials are poisoning our ground water, land and air. Unfortunately, the extend of this problem and the future costs involved in correcting it remain unknown. The Office of Technology Assessment last summer estimated that as many as 10,000 sites may require cleanup at a cost of $100 billion over the next 50 years.

Nationwide there are 850 sites on the national priority list. Ninety-eight of these sites are in New Jersey alone, more than in any other State. My own district in northern New Jersey contains four sites listed on the national priority list. The A.O. Polymer Co. in Sparta, the Maywood Chemical Co. in Maywood and Rochelle Park, the Metaltech/ Aerosystems Co. in Franklin, and the Ringwood Mines and Landfill in Ringwood are all presently in various stages of cleanup actions under the Superfund Program. Recognition of such sites has been belated, However, and official reaction has been too slow.

It is hard to overstate the need for enactment of the bill before us today. With each passing day, both the damage to the environment and to human health increase. In the long run it is in everyone's interest to deal with the hazardous waste problem today, rather than tomorrow. I urge my colleagues to support the Superfund package which is before the House today.

H.R. 2817 reauthorizes the Superfund Program at a $10 billion funding level for 5 years. It directs the EPA to evaluate the hazardous waste sites currently on its inventory, and to place those posing the most serious health threats on the National Priorities List. EPA will be required to begin remedial investigations at 150 sites next year and at even greater numbers in future years. In addition, this bill estimates uniform, national cleanup standards for Superfund cleanup actions.

Other important provisions of H.R. 2817 include community right-to-know regulations which require owners and operators of hazardous waste facilities to file important safety information with State and local officials. The bill also permits citizens to sue private parties to compel cleanup of hazardous waste sites under certain circumstances.

Overall this legislation represents a compromise which will allow critical cleanup actions to continue without undue delay. As I encourage my colleagues to support this bill, I am hopeful that we can move forward swifty towards final enactment of this crucial legislation.

The CHAIRMAN. The Chair would inform the gentleman from Michigan [Mr. DINGELL] that he has 16 minutes remaining, and the gentleman from New York [Mr. LENT] has 18 minutes remaining.

The Chair's intention, as has been expressed to the various chairs involved in the various committees of assignment is that we would have the two major committees of direct assignment, joint assignment, the Committee on Energy and Commerce and the Committee on Public Works and Transportation taking their time and reserving part of their time to be utilized at the end and after they conclude, and then to have the Committee on Merchant Marine and Fisheries, the Committee on the Judiciary, and the Committee on Ways and Means, not necessarily in that order, utilize their time in the middle.

Mr. DINGELL. That ruling, Mr. Chairman, is eminently acceptable to the majority on the Committee on Energy and Commerce, and we reserve the balance of our time at this point.

Mr. LENT. I would also, with that understanding, Mr. Chairman, reserve the balance of my time.

Mr. CHAIRMAN. The chairman of the Committee on Public Works and Transportation, the gentleman from New Jersey [Mr. HOWARD] is recognized for 30 minutes.

Mr. HOWARD. Mr. Chairman, I yield myself such time as I may consume.

(Mr. HOWARD asked and was given permission to revise and extend his remarks.)

Mr. HOWARD. Mr. Chairman, it is a pleasure for me to bring to the floor the bill H.R. 2817, The Superfund Amendments of 1985. It is a good bill that will strengthen and expand the Superfund Program and it is worthy of the endorsement of this House.

Before describing the major features of this important legislation, I want to acknowledge the contributions of the people who worked on this bill. There were hundreds of hours, including all-night sessions and complete weekends, put in on this bill by my colleague Bob Roe, the chairman of the Water Resources Subcommittee. He worked those long hours preparing the original committee bill and then on the torturous negotiations with the other committees. I also want to thank the gentleman from Minnesota [Mr. Stangeland], the ranking minority member of the subcommittee, and the gentleman from Kentucky [Mr. Snyder], for their work on the bill.

H.R. 2817 was jointly referred to the three committees of major jurisdiction—our Committee on Public Works and Transportation, the Committee on Energy and Commerce, and the Committee on Ways and Means. It was later sequentially referred to the Committee on Merchant Marine and Fisheries and the Committee on the Judiciary because of these committees' interest in specific aspects of the bill. After these five committees reported the bill in varying forms, the committees worked together to produce a bill which effectively combines the knowledge and experience of all those involved. This new bill was introduced yesterday by the distinguished majority leader, the genleman from Texas [Mr. Wright] and the distinguished minority leader, the gentleman from Illinois [Mr. Michel], and was jointly referred to our Committee on Public Works and Transportation and the Committees on Energy and Commerce and Ways and Means. The rule makes the text of this new bill in order as the original text of H.R. 2817 for the purpose of floor action.

This substitute is the product of long and paintaking negotiations on numerous issues, sometimes on a word-by-word basis. It was truly a difficult process but it produced a bill of which all of the committees involved can be proud. It is a bill that the American public can view as protecting its interests on an issue on which there should be no compromise.

This bill expands the Superfund Program by increasing the funding available to clean up these frightening hazardous waste sites and to research means of developing new technology for permanent treatment of hazardous materials. Under this bill, $10 billion will be available for the Toxic Waste Program over 5 years.

For a variety of reasons, ranging from mismanagement to a lack of sufficient funding and legislative direction, the first 5 years of the Superfund Program have been very disappointing. The bill we are considering today is designed to correct the deficiencies in the program and to ensure that it will continue at an effective rate in order to speed the cleanup of hazardous waste sites which are presenting threats to human health and environment. This substitute does that by requiring the Environmental Protection Agency to meet a firm schedule for the initiation of remedial action on sites now listed on the National Priorities List. The bill also expands the scope of the program by requiring that the NPL be increased to 1,600 sites by January 1, 1988, and by directing the initiation of remedial investigations and feasibility studies.

This substitute includes a strong provision requiring the users of toxic substances to report data on those substances and the emission of extremely toxic substances to local officials and to develop emergency response plans.

It applies the standards of existing environmental laws or their equivalent to any discharge from a hazardous waste site and allows individual citizens to sue EPA for failing to take action on a release or threatened release from a hazardous waste site.

Most important of all, this bill establishes the control of hazardous wastes and the cleanup of abandoned hazardous waste sites as a top priority of the Federal Government. The effort of the last 5 years was just not good enough. It was not administered properly and it is up to us to direct EPA to get to work. There were only six sites cleaned up in 5 years, one of which is already leaking, and this Nation cannot tolerate that kind of record.

It is time for us to get moving on this problem. There are thousands of sites that need to be evaluated—some say more than 10,000 sites. The cost of those cleanups could be $100 billion or more. We have identified the worst of the worst but we have not seen the type of progress that we expected when this program was first authorized. This substitute will produce action. Action is what anyone living near an abandoned hazardous waste site damands and we must respond. Those of us who have districts with

Superfund sites know these problems and we know the urgency of getting the cleanups started. We cannot tell people whose water and air are threatened by poisonous releases to wait. They can't wait and they won't wait. And they should not have to wait.

This bill is a big step toward moving this program in the right direction. I urge my colleagues to support it so we can continue the process of attacking these hazardous waste sites. With this environmentally oriented bill that represents a major advance in the protection of the American people from hazardous waste, we can do that.

□ 1355

Mr. Chairman, I reserve the balance of my time.

Mr. SNYDER. Mr. Chairman, I yield myself 5 minutes.

(Mr. SNYDER asked and was given permission to revise and extend his remarks.)

Mr. SNYDER. Mr. Chairman, I rise in strong support of H.R. 2817, the Superfund Amendments of 1985. The Public Works Committee has looked forward to this moment when we could begin consideration of a comprehensive and farsighted Superfund bill. As with the rest of the Nation, we sense the extreme urgency of the toxic waste threat. After the judicious deliberations that have taken place over the last 5 months and particularly the last 3 weeks, we are now ready to act with swiftness and sensitivity.

First, let me congratulate the subcommittee chairman, BOB ROE, and the ranking minority member, ARLAN STANGELAND, as well as the committee chairman, JIM HOWARD, for their leadership on the Public Works Committee. The Legislation before us today is a major accomplishment and they are largely responsible. I can personally attest to the extremely through and open review of each and every issue during countless sessions conducted by the committee's leadership. Given the personal, indepth time that has been spent on crafting this legislation, I am confident that its general direction is the proper one for the Nation and one which should gain wide-ranging support.

Second, let me congratulate the leadership of all the other committees—particularly the Energy and Commerce Committee. We deeply appreciate the cooperative contributions of Chairman JOHN DINGELL and ranking minority member JAMES BROYHILL, and other primary players such as DENNIS ECKART and NORMAN LENT.

In recent months, five committees have reported differing versions of the House Superfund reauthorization bill. For the last 3 weeks, at least six committees have been negotiating to produce a single, consensus bill as the vehicle for floor consideration. During these meetings, the goal has been to reach a sound compromise among all the competing versions so that we could avoid an all-out floor fight. All of us realize that without such constructive cooperation, we run the risk of postponing Superfund reauthorization until 1986. Mr. Chairman, neither a bloody floor fight nor congressional inaction would benefit anyone.

The primary players in these crucial negotiations have been the Public Works and Energy and Commerce Committees, the main committees of jurisdiction. Together, we have worked extensively with the Judiciary Committee, the Merchant Marine and Fisheries Committee, the Science and Technology Committee, the Armed Services Committee, and other interested Members in striving to reconcile any and all differences.

Mr. Chairman, rarely have I seen such bipartisanship and willingness to work toward compromise on legislation as crucial as this. Recognizing the extreme need to reauthorize Superfund this year, each committee has made a yeoman's effort to craft a workable, consensus bill.

Today's legislation embodies the most sensible and comprehensive approach to Superfund to date. The substitute not only manages to incoroprate widely disparate views on a wide range of topics, it does so in a coordinated, sensible manner. This bill represents a middle-ground approach. At the same time, it bears the identifiable mark of each committee and the support of the leadership as evidenced by the cosponsorhiip of the compromise by the majority leader Mr. WRIGHT and the Republican leader Mr. MICHAEL.

Congress enacted the Superfund law in 1980 to give the Federal Government the authority it needed to clean up hazardous waste sites and otherwise protect public health and the environment from releases of manmade hazardous substances. The legislation before us today does not change the basic thrust of the original Superfund

Program. Instead, the consensus bill amends and refines the program to reflect what 5 years of experience and detailed analysis have taught us.

Title I of the legislation amends response authorities and liability provisions in the 1980 act. The bill establishes cleanup schedules and standards that give EPA and other agencies specific direction, without—as a general rule—depriving them of needed flexibility.

I do have some concern over specific portions of the mandatory scheduling provisions. For example, the bill requries EPA to begin remedial actions at an annual rate that goes from 125 in the first year to 175 in the fourth year—600 in all over 4 years. While I would never want to grant EPA complete discretion, I do feel the Agency needs some flexibility in working such a complex program. To address these concerns, I proposed that EPA be required to report to Congress if it cannot achieve the schedules. Unfortunately, the final compromise does not embody this approach.

I am concerned about the feasibility of mandatory schedules partly because of my prior experiences in Congress. If there's one lesson I have learned, it is that trust fund programs are not always used for the same purposes under which they were established. With the Gramm-Rudman legislation and other restraints, it is almost certain that the Appropriations Committee would not appropriate the full funding amount contemplated in this bill. The temptation to Finance the deficit or offset other expenditures by not spending trust fund moneys has led to artificial slowdowns in the Highway Program, for example. I predict the same outcome with the Superfund. Thus, with EPA's greatly increased duties but continually restricted funding, affected citizens will likely have EPA into court and, as a result, court-ordered cleanup programs will be the actual mechanism by which cleanups occur.

On balance, however, title I has some very good and workable provisions. Each State's important right to participate in the cleanup process is jealously guarded. At the same time, the Federal Government will be able to carry out a uniform, nationwide program. The bill contains a comprehensive new section of settlements designed to encourage and facilitate negotiated private party cleanups. This will lead to fewer lawsuits and more cleanups. Specfically, EPA may issue covenant not to sue to private parties who enter into certain settlements and may limit the future liability of de minimis—or minimal—contributors to the hazardouis waste problem.

The bill expands the health related authorities under Superfund. Toxicological profiles and health assessments are provided for in the bill so that Superfund remains, first and foremost, a public health statute. The bill aslo establishes a badly needed program to develop alternative and innovative treatment technologies. Our bill also remedies the unnecessary problems facing response action contractors so that the Nation can count on cleanups in the future.

Title II of the legislation squarely addresses some of the shortcomings in the current Superfund Program. Our bill directs the bipartisan Government Accounting Office to study the insurance crisis which, in recent months, has captured the attention of the entire Nation and which may threaten the very existence of the Cleanup Program.

The substitute also provides for the cleanup of leaking underground storage tanks—a newly discovered problem that endangers the Nation's water supplies, by expanding upon the Regulatory Program in the Resource Conservation and Recovery Act [RCRA] established last year.

One of the bill's major accomplishments is in the area of citizen suits, which authorize litigation by affected parties, including private citizens acting as attorney general. The bill allows affected citizens to sue alleging either: First, the violation of any Superfund requirement; second, the failure of EPA or other Federal agencies to perform ministerial duties; or, third, the release of a hazardous substance from a hazardous waste disposal site posing an imminent and substantial threat to public health or the environment.

This compromise embodies the middle ground approach of the Public Works committee. The Energy and Commerce's bill omitted the third leg of the triad—the imminent and substantial endangerment language. On the other hand, the Judiciary Committee contained a much broader citizen suits provision which included the controversial third leg. The Public Works bill, and the final compromise among all the committees, contains the imminent and substantial endangerment language but limits the citizen suits to situations involving releases or threatened releases from hazardous waste disposal sites. This properly narrows the scope of the Judiciary's original provision which would have allowed suits for releases from any facilities.

In response to the Bhopal and Institute, WVA, crises, title III of our bill provides for comprehensive community right-to-know and emergency response programs.

Title IV addresses oil pollution liability and compensation in the most comprehensive, systematic manner to date. The Public Works Committee has worked closely with the Merchant Marine and Fisheries Committee to draft this important legislation that will coordinate the existing patchwork of Federal laws regarding oil spill liability. Tragically, Congress has failed to enact this badly needed legislation during the last five sessions of Congress. We can do something about that today.

Title V of the legislation generally provides for a $10 billion, 5-year Superfund Program. This will give the Nation the extra time and money which it so desperately needs.

This vital compromise bill, deserves the favorable consideration of every Member. Mr. Chairman, we have come too far and worked too hard to stop now. The Nation has been waiting for us to help solve the toxic waste threat. It is time we stopped talking and started delivering. This bill represents the first step in responding to the public's needs. We must continue this progress and we can do so by strongly supporting today's consensus bill and opposing amendments that disturb the balance we have achieved.

The CHAIRMAN. The gentleman from Kentucky [Mr. SNYDER] has consumed 4 minutes.

Mr. HOWARD. Mr. Chairman, I yield such time as he may consume to the chairman of the Subcommittee on Water Resources of the Committee on Public Works and Transportation, the gentleman from New Jersey [Mr. ROE].

(Mr. ROE asked and was given permission to revise and extend his remarks.)

Mr. ROE. Mr. Chairman, I am pleased to bring to the floor today the Superfund Amendments of 1985. This bill is the culmination of the efforts of five committees of the House to which the bill was jointly and was sequentially referred. It was jointly referred to the three committees of primary jurisdiction—our Committee on Public Works and Transportation and the Committees on Energy and Commerce and Ways and Means. It was also sequentially referred to the Committees on Merchant Marine and Fisheries and Judiciary, in view of their interest in specific aspects of the legislation.

These committees, after reporting the bill, developed a new compromise bill, H.R. 3852, representing the benefits of their respective knowledge and experience. This new bill also includes provisions worked out with the Committee on Armed Services and Science and Technology.

The Superfund Amendments of 1985 is the culmination of extensive hearings and analysis of the Superfund Program and the need for change in the program to better address the problem of hazardous wastes. The bill which is now before us represents a strong commitment to solving our Nation's hazardous waste problem while assuring that those efforts proceed in a manner which is fair to all interests concerned.

One of the major provisions of the bill extends the fund through fiscal year 1990 and increases the amount in the fund from $1.6 billion to $10 billion. This will greatly increase the ability of the Environmental Protection Agency to address the serious problem of toxic wastes. The Office of Technology Assessment estimates that 10,000 or more sites may require cleanup by Superfund with costs to Superfund in excess of $100 billion. An increase in the size of the fund to $10 billion represents a strong commitment toward achieving our ultimate goal of cleaning up our Nation's hazardous waste.

The bill imposes mandatory cleanup schedules to assure that the Superfund Program promptly addresses the problem of hazardous wastes. One of the major criticisms of the Superfund Program is the slow pace at which actions have occurred. In 5 years and after spending over $1 billion, EPA has determined only six sites to be cleaned up, and one of these, the Butler Tunnel in Pennsylvania, is now in need of further cleanup measures following major rainfall. The schedules are designed to assure that much more rapid progress is made by the program. The schedules require that the national priorities list, or NPL, be expanded from its current size of 850 listed and proposed sites to 1,600 sites by January 1, 1988. Remedial investigations and feasibility studies, that is, the detailed investigation and study of a site on the NPL prior to the design and construction of remedial measures, must be commenced at NPL sites at the rate of 150 the first year, 175 the second year, and 200 the third and subsequent years.

Remedial actions, long-term actions consistent with a permanent solution, must be commenced at a rate of 125 in fiscal year 1987, 140 in fiscal year 1988, 160 in fiscal year 1989, and 175 in fiscal year 1990. In addition, preliminary assessments, the collection and review of available information for a given site, must be conducted on all sites currently on the comprehensive environmental response, compensation, and liability information system list, prior to January 1, 1987. If this assessment reveals that a more detailed site inspection is necessary, this inspection must be completed by January 1, 1988.

The final element of the schedules provision requires the Administrator of EPA to ensure that remedial actions are completed for all sites currently on the NPL within 5 years of enactment of this legislation. If such action is not completed within 5 years, the Administrator must publish an explanation why it could not be completed.

These mandatory schedules are designed to assure that EPA actions are taken in a timely and responsive manner while at the same time recognizing the valid concerns and limitations of that Agency.

The bill requires EPA to revise the national contingency plan which establishes procedures and standards for responding to releases to reflect amendments made by this act to assure the proper assessment of the hazards posed by sites which are evaluated by EPA for inclusion on the NPL.

Cleanup standards for Superfund sites are included in the bill, the basic requirement is that a level or standard of control to protect human health and environment must be provided. The provision favors permanent solutions over nonpermanent solutions and requires the application of the standards of other Federal environmental laws to the extent they are legally applicable, or relevant and appropriate under the circumstances. These standards address the "how clean is clean" issue which has remained a major issue of Superfund. The Superfund Program will now have definitive standards to use to assure that EPA and private party actions result in a proper response.

Provisions have also been included to create a right of citizens to sue any person alleged to be in violation of Superfund or to abate a release from a hazardous waste disposal site which may present an imminent and substantial endangerment to human health and the environment. Suit may also be brought against the Administrator of EPA, or any other department of the United States, for failure to perform any nondiscretionary act or duty under Superfund. These citizen suit provisions have been included to both encourage diligent Federal enforcement of the Superfund Program and to assist in locating and taking actions against violators of Superfund's provisions.

Also contained in the bill are definitive public participation requirements guaranteeing a notice and comment period prior to adoption of a remedial plan. These requirements are designed to assure that appropriate cleanup actions are taken while at the same time assuring that undue delay does not occur. As further protection of citizens, the bill includes comprehensive provisions on community right to know to assure that information is available to local communities concerning the hazardous chemicals which are located in the community. Information on hazardous chemicals is of extreme importance to communities in preparing for and preventing disasters such as that which occurred at Bhopal, India, 1 year ago this week. The required information may include types and amounts of chemicals, maps showing location of chemicals, and potential routes of human exposure. For extremely toxic substances, additional information is required on the amount of such substances which may be released into the environment. This information may be provided by monitoring or by reasonable estimates if data is not readily available. In addition, emergency response provisions require the establishment of local emergency response committees and emergency response plans to improve the ability of State and local governments to provide protection of the community if a release should occur.

The bill addresses the serious problem of cleaning up petroleum from leaking underground storage tanks. The Solid Waste Disposal Act is amended to authorize EPA to undertake corrective actions or to require the owner or operator to take corrective actions relative to a release or threatened release. Limitations on liability are established at $1 million in the case of an operator who operates seven or fewer tanks, $3 million in the case of an owner who owns seven or fewer tanks, and $5 million in the case of an owner or operator who owns or operates more than seven tanks at a facility. These limits are increased to $10 million if the owner or operator has gross assets of more than $1 billion but not more than $5 billion, $25 million if the owner or operator has gross assets of more than $5 billion but not more than $10 billion and $50 million if the owner or operator has gross assets of more than $10 billion. These limitations may be reduced by EPA by regulation.

These amendments also include a research and development program designed to develop new information on toxic wastes and effective technologies for eliminating them as hazards. These provisions specifically address the serious lack of information and technology which impede the ability of the Superfund Program to successfully eliminate the problem of hazardous wastes.

The bill also includes provisions to require response actions at Federal facilities, thereby assuring that the provisions of Superfund apply to hazardous wastes generated by departments of the Federal Government. A new Federal agency hazardous waste compliance docket is established to provide information concerning materials located at Federal facilities and the agencies must report annually to Congress on their progress in addressing hazardous waste. This provision recognizes the need for Federal facilities to be as responsive to the dangers of hazardous waste as are non-Federal facilities.

The EPA is given specific authority to enter into settlement agreements with potentially responsible parties. These agreements can limit future liability of the parties with such terms and conditions as the bill provides and the Administrator of EPA determines. A fund is authorized to be established as part of the settlement for the future protection of groundwater and surface water. To avoid the so-called sweetheart deals which may occur if the settlement process is abused, settlement agreements under the section must be entered as consent and decrees and must be open for public review and comment. In addition, special provisions are included for rapid, final settlements with de minimis contributors of hazardous waste.

The bill continues the ability of the fund to be available to pay for the loss of natural resources from hazardous wastes through restoration or other means in those instances where a responsible party is not available to pay for such damages.

The bill expands the provisions of Superfund relating to health assessment and protection by revising and expanding the statutory responsibilities of the Agency for toxic substances and disease registry. The bill recognizes adequate health related activities are necessary to support Superfund response actions through toxicological profiles, health effects studies, health assessments, research and training, health surveillance programs, and other efforts designed to improve the ability to make pubic health decisions through expanding the existing body of scientific knowledge.

The bill also contains provisions addressing oil pollution liability and compensation relative to spills in the inland and territorial waters of the United States. The provisions establish a separate industry-financed marine oil pollution compensation fund to compensate those suffering economic loss as the result of an oil spill. The bill imposes strict liability on those producing or transporting oil and encourages prompt and complete cleanup of oil spills. The result of these provisions is a clear and predictable legal and regulatory framework to address oil pollution matters.

Mr. Chairman, while the 1980 Superfund law significantly advanced the Federal Government's ability to respond to the problem of hazardous wastes, it nonetheless has proven to be in need of amendment, not only for the purpose of expanding and continuing the trust fund, but also for addressing other factors relative to the nature and rate of addressing our hazardous waste problem. The Superfund amendments as contained in this bill represent a strong and fair approach for continuing our progress toward eliminating our Nation's hazardous waste problem. I strongly urge its passage.

Mrs. JOHNSON. Mr. Chairman, I yield 5 minutes to the gentleman from Arkansas [Mr. HAMMERSCHMIDT].

(Mr. HAMMERSCHMIDT asked and was given permission to revise and extend his remarks.)

Mr. HAMMERSCHMIDT. Mr. Chairman, I rise in support of the amendment in the nature of a substitute to H.R. 2817, the Superfund Amendments of 1985.

This compromise bill is the result of many hours of negotiations between the leadeship and staff of those committees with jurisdiction over this legislation. The final product before us today is a strong, sensible response to the deadly serious threat of contamination from toxic chemicals and hazardous substances which have been dumped into our environment.

It provides for a 5-year, $10 billion Superfund Program, which should allow our Nation the additional time and funding needed to deal with the growing problem of hazardous waste sites.

For their bipartisan leadership in getting us to this point, I commend Chairman JIM HOWARD, and ranking minority member GENE SNYDER of the full Committee on Public Works and Transportation; our Water Resources Subcommittee Chairman BOB ROE, and ranking minority member ARLAN STANGELAND; and the leadership and staff of the Committees on Energy and Commerce, Judiciary, Merchant Marine and Fisheries, Armed Services and Ways and Means.

The compromise bill before the House today builds on our 5 years of experience since enactment of the 1980 Superfund law. It provides strong new requirements while allowing the Environmental Protection Agency sufficient flexibility to carry out its responsibilities under the new law.

That important combination of direction and flexibility are part of the bill's requirement of mandatory, legally enforceable cleanup schedules for the listing of future national priority list sites and the commencement and completion of cleanup studies and remedial actions.

I would be less than frank, however, if I did not express some reservations about the mandatory cleanup schedules in the compromise bill. While I support the general concept of some mandatory schedules, I am concerned that the specific schedules in the compromise bill may be too strict, especially given the current condition of the Federal budget and the spending cuts that we all know will be coming once the Gramm-Rudman proposal is enacted. If EPA's budget is cut as a result of congressional action and/or Gramm-Rudman, then EPA probably will not be able to meet the strict schedules in the bill. If that happens, then EPA will be subject to citizen lawsuits to force it to meet the schedules. As a result, the cleanup program would not be run by Congress or EPA. Instead, it would be run by a Federal district court judge and the parties to the lawsuit. In my view this is not the ideal situation. I am hopeful that the bill, when it comes out of conference, will call for reasonable schedules that EPA can meet.

Cleanup measures must also meet mandatory cleanup standards which must conform to legally applicable or relevant and appropriate environmental laws or water quality criteria under the Clean Water Act, to the extent that a cost-effective remedy is available to meet those standards.

In an effort to reduce the number of lawsuits and increase the number of cleanups, the bill contains a comprehensive new section on settlements.

The compromise also establishes a new program for the cleanup of leaking underground storage tanks, expanding on the regulatory mechanisms established for such tanks in the Resource Conservation and Recovery Act amendments approved in the last Congress. This is a newly discovered problem that endangers the Nation's water supplies.

A comprehensive emergency response and community right-to-know program would be established, providing for the creation of State and local response organizations. Reporting requirements would be imposed on those who handle hazardous substances, and local citizens would have access to information concerning the impact on their communities of a company's procedures in handling hazardous material.

EPA would be required to establish

an inventory and notification requirement for facilities handling hazardous substances which are so acutely toxic that release of any amount in any form presents an imminent and substantial endangerment to human health.

Still fresh in our minds is the terrible tragedy that struck Bhopal, India, only 1 year ago this week. That disaster took the lives of thousands, and it serves as a grim reminder to us of the dangers inherent in toxic waste and the need to give our Environmental Protection Agency the authority it needs to prevent such incidents. I believe that this compromise legislation provides an important impetus to such critically important efforts.

The bill also addresses oil pollution liability and compensation by establishing a compensation program, to be administered by the Department of Transportation and funded through a tax of 1.3 cents-per-barrel on petroleum.

Mr. Chairman, this compromise legislation encompasses our best efforts to meet the pressing need to reauthorize Superfund this year. I believe we have before us a good bill to take to conference. It represents a consensus among the varied interests involved and, most importantly, it will meet the extreme urgency of the toxic waste threat.

Accordingly, I urge my colleagues to support the compromise amendment in the nature of a substitute.

□ 1410

Mr. HOWARD. Mr. Chairman, I yield 3 minutes to the gentleman from Louisiana [Mr. BREAUX], a distinguished member of our committee.

(Mr. BREAUX asked and was given permission to revise and extend his remarks.)

Mr. BREAUX. I thank the chairman for yielding, and I would like to commend all of the various committees who have participated in bringing us together on the reauthorization of the Superfund Program, which I strongly support.

I would like to just address my comments very briefly to later amendments dealing with the taxation provisions on the question of who is going to pay for the Superfund provisions.

The question is not really whether you want to stick it to the oil and gas companies or whether you somehow want other industries in the country to also pay for cleaning up the Superfund sites. The real goal is actually very simple. The real goal is that we should all be able to support a policy that says those who are responsible for depositing the waste should also participate in paying for the cleanup of those wastes.

The Downey amendment to the committee bill, which I oppose, says let those companies who produce the chemicals pay for all of the cleanup costs. I ask you, is there any one single legitimate reason for saying, as the Downey amendment says, that you should completely relieve all of the companies who have actually caused the pollutants to be deposited and who have created the Superfund sites, to let them continue to illegally dump and somehow avoid having to pay any cost of cleanup? I would say, for course, there is no legitimate reason for that.

Virtually all types of businesses and industries have contributed to abandoned hazardous waste sites. More than 4,000 businesses, industries, Government and consumer firms have been identified by EPA as being potential contributors to waste at the Superfund sites. EPA's list of potential responsible parties who have actually caused the problem run from automobiles, banking, electronics and electrical manufacturing, furniture, aircraft and aerospace, optical products, computers, food, beverage and grocery manufacturers, paper and packaging product companies, airlines, rubber products, communications, textiles, and utilities.

The Downey amendment, in effect, would say that we are going to give a blank check to all of these industries that have illegally dumped these toxic wastes and created these sites to continue to do so, instead of trying to make them help, too, in a small way. And it is a small way, because the broad base tax is projected to cost .08 percent of the sales price of their products. It is a small price to contribute to help clean up America.

I say vote for the committee provisions and against the Downey amendment, vote for the proposition that all industries that have helped cause the problem should also help solve the problem.

Mr. SNYDER. Mr. Chairman, I yield 1 minute to the gentleman from Ohio [Mr. MCEWEN].

Mr. MCEWEN. I thank the gentleman for yielding time to me.

Mr. Chairman, as we well know, the authority to collect taxes for Superfund expired on September 30, 1985. With an EPA estimate of 1,500 to 2,500 hazardous waste sites requiring attention, the time is past due for House action on H.R. 2817.

As a member of the Committee on Public Works and Transportation and of its Subcommittee on Water Resources, I rise in support of this bill to reauthorize the Superfund. I have seen the time and effort exerted through staff preparation and during committee deliberations. The Committees on Energy and Commerce, and Public Works and Transportation, Merchant Marine and Fisheries, and Judiciary have scrutinized, synthesized, negotiated, and renegotiated the contents for our Nation's Superfund policy. This Superfund bill is the best vehicle for hazardous waste cleanup. H.R. 2817 will not only be environmentally comprehensive, and financially sound, but most importantly, the Superfund should respond to the safety and health of the public.

The national importance of H.R. 2817 is obvious. The Superfund is a societal, environmental, and political issue. Every American is affected either directly or indirectly by the national problem of hazardous waste storage and disposal and, consequently, the Superfund.

Therefore, with a new version of H.R. 2817 and an open rule, let us today not lose sight of the work which has been done and undo its good. The bill introduced today is a consensus proposal. Due to the intense controversy of Superfund reauthorization, we are late in bringing H.R. 2817 to the floor, but better to have the good bill passed late, than none at all.

Mr. HOWARD. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan [Mr. Wolpe].

(Mr. WOLPE asked and was given permission to revise and extend his remarks.)

Mr. WOLPE. Mr. Chairman, I rise in support of the reauthorization legislation.

Mr. SNYDER. Mr. Chairman, I yield 2 minutes to the gentlewoman from Connecticut [Mrs. Johnson].

(Mrs. JOHNSON asked and was given permission to revise and extend her remarks.)

Mrs. JOHNSON. I thank the gentleman for yielding.

Mr. Chairman, I rise in strong support of this Superfund reauthorization and wish to commend the chairman of the Committee on Public Works, the gentleman from New Jersey [Mr. Howard], and the chairman of the Water Resources Subcommittee, the gentleman from New Jersey [Mr. Roe], the ranking minority members, the gentleman from Kentucky [Mr. Snyder] and the gentleman from Minnesota [Mr. Stangeland], and also the leadership of both the committee and the subcommittee on both sides of the aisle of the Committee on Energy and Commerce, not on a mere reauthorization of Superfund legislation but on a thoughtful and thorough review of both America's laws and her programs whose purpose it is to clean up toxic disposal sites throughout our 50 States. The compromise package addresses many changes I felt were essential to expedite the cleanup of the Nation's hazardous waste sites and to obviate the need for excessive, costly and time-consuming litigation. If we are serious about preserving our environment for future generations, it is time we put shovels in the ground, not lawyers in the courtroom.

As prompt cleanup is our overall goal, I want to note particularly three provisions of this bill that have not been spoken to previously that will facilitate getting those shovels in the ground. First, the section addressing response action contractors will enable them to enter into agreements with EPA or responsible parties to begin remedial projects. Under current law, such contractors who had no role in creating hazardous waste sites, who contributed no waste thereto, were caught in the web of joint, strict, and severe liability as participants at the site.

Obviously, we cannot have timely participation by cleanup contractors if they are forced to place company assets at unbounded risk.

I also am pleased to see congressional recognition of our responsibility to encourage the development of new technology for permanently cleaning up toxic wastes. As Chairman Roe has said many times, current technology permits us to contain wastes, not permanently destroy them or render them harmless. With fast-track treatment of promising new technology, and with provisions addressing the current lack of liability insurance for the commercial testing of new technology, we will accelerate the development of the tools we need to move away from containment and toward permanent cleanup of our Nation's toxic wastesites.

Third, this legislation moves toward more realistic settlement procedures which will reduce costly and time-consuming litigation and enable participants to reduce their future liability under specific conditions.

Because we are unable to clean up most sites and are primarily containing problems, Government will rarely be able to completely release private sector parties from further liability. However, under the Public Works bill, we clarified and explicitly gave the Environmental Protection Agency the authority to constrain the future liability of settling parties to the same proportion of costs they assumed under their settlement. We thereby limited future liability of settling parties in a manner that was fair to the individuals, many of whom are small, family-owned businesses, and to the public. While the Public Works Committee's precise language was not retained in the compromise bill, I believe the intent was retained. While I would have preferred clearer assurances on this point in the language of the bill before us, I believe the legislation does represent a significant step forward in legislating a process that will accelerate settlement agreements to clean up hazardous wastesites.

I commend the leaders of the various committees who worked so hard on reviewing and evaluating the strengths and weaknesses of current law and protecting our Nation's environment. They have crafted a decidedly better, indeed, strong, Superfund bill.

Mr. HOWARD. Mr. Chairman, I reserve the balance of my time.

Mr. SNYDER. Mr. Chairman, I yield 3 minutes to the gentleman from New Jersey [Mr. GALLO].

(Mr. GALLO asked and was given permission to revise and extend his remarks.)

Mr. GALLO. I thank the gentleman for yielding time to me.

Mr. Chairman, members of this body can be very pleased today that we are effectively dealing with one of the most important issues to face Congress this year. Reauthorizations of the Superfund is crucial to the health and safety of millions of Americans and is essential to the future of our common environment.

I rise today in support of this bill. As a member of the Public Works and Transportation Committee, I am proud of this effort, which reflects the thinking of our committee. Chairman JAMES HOWARD and subcommittee chairman ROBERT ROE deserve a great deal of service for the strength and farsighted provisions contained in this bill.

I rise, in particular, to talk about one aspect of the bill that has commanded a great deal of my time and attention since this summer, when I conducted a tour of the 11 Superfund sites in my district.

I am talking about the provision of this bill that creates a national reporting network to give our communities the information they need to respond to emergency situations involving hazardous materials.

We have all heard news reports about emergencies that could have been controlled more easily, if emergency personnel had had the right information at the right time.

These incidents, which were clear threats to the public health and safety, prompted me to introduce H.R. 2969, the community right-to-know bill, on July 11.

I have subsequently introduced, with the gentleman from West Virginia, Mr. ROBERT WISE, an additional community right-to-know bill, H.R. 3300, to deal with this important problem.

I am proud that my colleagues on the Public Works and Transportation Committee have included this community right-to-know language in the Superfund bill.

Simply, this community right-to-know provision sets a minimum national standard for gathering specific information about the types of substances either stored or used in our communities.

This information, which will include not only listings of substances, but also suggested actions that should be taken by emergency services personnel, is the first of its kind in Federal law.

It includes Superfund sites in the reporting aspect of the proposal. But, it goes beyond those sites to include the use and storage of a long list of hazardous materials.

Many States and local communities already make these requirements, and they will continue to do so under this provision. Creating a national standard will assist emergency services personnel in training and other preparations for quick response.

Through the creation of regional emergency response committees, we will give communities across the country the tools they need to develop realistic responses geared to local needs.

We will not create unnecessary bureaucratic requirements that often slow emergency responses with unneeded paperwork.

The need for a national standard based on effective local response to emergencies is clear. I feel strongly that this provision of the Superfund bill does the job effectively.

I thank the gentlemen from New Jersey, Mr. HOWARD and Mr. ROE, for their faith in this proposal as our strong committee Superfund bill was being developed. I thank them for their persistence as this bill made its way through Congress. I think we have produced a sound bill that deserves the support of this body. I urge your support.

Mr. SNYDER. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. LAGOMARSINO].

(Mr. LAGOMARSINO asked and was given permission to revise and extend his remarks.)

Mr. LAGOMARSINO. Mr. Chairman, I commend the dedication and legislative skills of all who have brought us this compromise today. I strongly support it. I would like to emphasize a provision in this compromise that is very important to my district and very important to the overall management of hazardous waste, the so-called siting provision. This section of the bill encourages the establishment of hazardous waste disposal and treatment facilities. Under the provision, the States would have to assure the availability of hazardous waste disposal and treatment facilities for all waste expected to be generated within the State during a 20-year period. Those facilities could be within the State or outside it, in accordance with an interstate or regional agreement. While the ultimate goal is an should be to encourage on-site treatment of toxic wastes, there will probably always remain the need for some landfill storage.

Located within my district is Casmalia Resources, one of only two class 1 hazardous waste sites in the entire southern California area. The only other class 1 site is under enforcement action by EPA. What this means is that Casmalia is receiving an unfair of the most toxic wastes that are produced in all of southern California.

Further, the California State health director, Ken Kizer, has issued a warning to Casmalia stating that unless that facility can bring an existing odor problem under control, complete a reengineering study and conduct daily air and water monitoring tests, then, as of December 21 of this year, the facility will not be allowed to accept any liquid hazardous waste. It is clear to me and should be to everybody that these 2 hazardous waste sites are just not sufficient for the amount of toxic wastes that southern California generates. Dr. Kizer's action is an attempt to make other California counties aware that they need to share the responsibility for the toxic wastes they produce.

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Mr. Chairman, I feel that the Superfund provision that forces states to provide adequate disposal and treatment facilities is necessary to ensure that situations like Casmalia do not occur nationwide. Each and every county needs to feel responsible one way or another for the toxic wastes they produce.

The problem in southern California is that Casmalia, which was orginally designed to handle waste products from the Santa Barbara County area only is now receiving truckloads that were orginated several hundred miles away. It is a hazard to transport this highly toxic waste on overcrowded highways. We have had some incidence of spills, and yet, only two such facilities can legally handle these products.

I urge my colleagues to support reauthorization of Superfund in the hopes that provisions such as this one will lead to safer and more practical solutions to the Nation's toxic wastes.

Mr. SNYDER. Mr. Chairman, I wish to reserve the balance of my time, and I would like to confirm that I have consumed 18 minutes.

The CHAIRMAN. The Chair will state that the gentleman from Kentucky [Mr. SNYDER] has 12 minutes remaining and the gentleman from New Jersey [Mr. HOWARD] has 16 minutes remaining.

Consistent with the Chair's initial announcement that he would then go to the committees to whom the bill was sequentially referred, we do not see the Committee on Ways and Means represented on the floor. The Chair understands the Committee on the Judiciary is prepared to proceed.

The gentleman from Kansas [Mr. GLICKMAN] is recognized for 15 minutes.

Mr. GLICKMAN. Mr. Chairman, before I begin my own remarks, I yield such time as he may consume to the gentleman from New Jersey [Mr. RODINO].

(Mr. RODINO asked and was given permission to revise and extend his remarks.)

Mr. RODINO. I thank the gentleman for yielding time to me.

Mr. Chairman, the reauthorization of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980—Superfund—is one of the most important matters currently before the Congress.

The Committee on the Judiciary had a sequential referral of H.R. 2817, the reauthorization bill that is before this House. The purpose of this referral was to allow the committee to examine and make recommendations on those provisions of the bill that are within the committee's jurisdiction.

The Judiciary Committee focused its consideration on those provisions which establish administrative and settlement procedures, and on those provisions which address access to, and standards of, judicial review.

Among the most important amendments recommended by the Judiciary Committee, which have now been incorporated in the compromise version before the House today, is one which allows citizens to sue for the abatement or clean-up of any hazardous substance that poses an imminent and substantial endangerment to their health or environment. This provision is essential so that citizens can adequately protect the health and safety of themselves and their communities.

The committee also amended H.R. 2817 to provide for somewhat expanded access to judicial review of the selection of a clean-up remedy by the Administrator of EPA. At the same time, this modification requires clean-ups to continue while these court challenges are being decided.

In addition, the committee amendments encourage EPA to settle with—and not to sue—two classes of alleged polluters: responsible parties who contributed only a small amount of waste which is low in toxicity, and individuals who became owners of land without any knowledge or responsibility for the fact that it contained a hazardous waste site.

By these and other amendments, the Judiciary Committee strongly affirmed its commitment to cleaning up hazardous waste sites. At the same time the committee took into account the legitimate interests of those who have to pay for these clean-ups. Nearly all of these amendments have been included in the compromise developed by the five committees with jurisdiction over the bill. This compromise constitutes a strong and effective reauthorization of the act, and I support its adoption.

At the same time, the Judiciary Committee intends to offer a committee amendment to the compromise. This amendment would modify section 207 of H.R. 2817—new section 310 of Superfund—the section which provides for citizens suits under the act.

The Judiciary amendment would strike the language of the compromise which describes the sites which may be the subject of a suit for imminent and substantial endangerment and replace it with the language adopted by the Judiciary Committee. The Judiciary Committee believes that its version provides citizens with important opportunities to act to protect their health and environment which are not covered by the compromise.

Finally, Mr. Chairman, I emphasize Superfund reauthorization is of critical importance to every citizen of this Nation. I urge the House to enact this necessary legislation.

Mr. GLICKMAN. Mr. Chairman, I yield myself such time as I may consume.

(Mr. GLICKMAN asked and was given permission to revise and extend his remarks.)

Mr. GLICKMAN. Mr. Chairman, we are here today to enact legislation to reauthorize the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund). Reauthorization and strengthening of this act is one of the most important issues facing Congress.

At the heart of Superfund are many complex legal and judicial issues that reflect the tensions inherent in the act itself: First, the need for effective and speedy cleanup of hazardous waste sites in order to protect human life and the environment; second, the need to protect the interests and rights of those affected by these sites in obtaining effective and speedy cleanup; and third, the need to protect the legitimate interests and rights of those who may be held liable for such cleanups.

These legal procedures—such as citizens' suits; strict, joint, and several liability; judicial review; and contribution—are within the jurisdiction and expertise of the Judiciary Committee. It is through these legal procedures that cleanup takes place, liability is imposed, and costs are recovered. For this reason, the Judiciary Committee received a referral of H.R. 2817.

The Judiciary Committee carefully examined the complex legal, judicial, and administrative provisions that are at the heart of the operations of the Superfund. After reviewing H.R. 2817, the committee recommended a number of amendments to the bill. It also recommended adoption of provisions contained in other committees' versions of the bill.

The Judiciary Committee amendments and recommendations balance the need for effective and expeditious cleanups with the rights of responsible parties and the rights of those affected by hazardous waste sites. These amendments and recommendations substantially improve the existing Superfund Act.

The committees with jurisdiction over H.R. 2817—Energy and Commerce, Public Works, Ways and Means, Judiciary, and Merchant Marine and Fisheries—have worked together over the last several weeks to produce the compromise which is before the House today and which incorporates elements contained in each of their versions. While each committee would have preferred to have its own approach adopted without change, we have nevertheless succeeded in creating a bill which contains a reauthorization of Superfund that substantially strengthens its provisions. This compromise incorporates nearly all of the changes recommended by the Judiciary Committee.

While the Judiciary Committee supports adoption of the compromise version, the committee is concerned about a portion of the citizens suit provision contained in this compromise. This provision would allow citizens suits to prevent imminent and substantial endangerment to their health and environment against only "hazardous waste disposal sites," rather than against "any facility" from which hazardous substances are released, as had been recommended by the Judiciary Committee. It would also expand the provision by allowing suits to abate hazardous substance releases into the air. Thus, while the committee generally supports the compromise, it intends to offer an amendment to change this language to that of the original Judiciary Committee language.

Mr. Chairman, H.R. 2817, as set forth in the compromise version drafted by the committees of jurisdiction, is important legislation that must be adopted in this session of the 99th Congress. The people of this Nation want no further delay in the important task of cleaning up hazardous waste sites. I urge enactment of this reauthorization.

Mr. Chairman, I ask to include in the RECORD at this point an explanation of those portions of the compromise which incorporate the amendments recommended by the Judiciary Committee. This document explains the purpose and intent of those amendments as they were modified by the compromise.

Mr. Chairman, the compromise version of the Superfund reauthorization, which is the basic document for floor consideration, incorporates nearly all of the amendments recommended by the Committee on the Judiciary in its report on H.R. 2817 (H. Rept. 99-253, part 3). This explanation states the purpose and intent of the Judiciary Committee amendments and recommendations as they were set forth in or modified by the compromise.

EXPLANATION OF PURPOSE AND INTENT

SECTION 113 OF THE COMPROMISE: LITIGATION, JURISDICTION, AND VENUE

Section 113 of H.R. 2817 amends existing section 113 of CERCLA, which is entitled "Litigation, Jurisdiction, and Venue". This section sets forth a number of administrative and judicial procedures applicable to Superfund decision-making and litigation. It also clarifies the availability of judicial review regarding contribution claims and settlements, and places limits on judicial review of the selection of a clean-up remedy.

I. Contribution: New Subsection 113(f) of CERCLA

New subsection 113(f) of CERCLA deals with the availability of contribution for claims under Superfund. This provision confirms that potentially responsible parties have a right of contribution under CERCLA.

New subsection 113(f)(1) changes "defendant alleged or held to be liable" to "person potentially liable or held to be liable". This simply clarifies and emphasizes that persons who settle with EPA (and who are therefore not sued), as well as defendants in CERCLA actions, have a right to seek contribution from other potentially responsible parties.

New subsection 113(f)(1) of CERCLA also ratifies current judicial decisions that the courts may use their equitable powers to apportion the costs of clean-up among the various responsible parties involved with the site. Courts are to resolve claims for apportionment on a case-by-case basis pursuant to Federal common law, taking relevant equitable considerations into account. Thus, after questions of liability and remedy have been resolved, courts may consider any criteria relevant to determining whether there should be an apportionment.

Relevant criteria for the courts to use in deciding whether to grant apportionment may include: the amount of hazardous substances involved; the degree of toxicity or hazard of the materials involved; the degree of involvement by parties in the generation, transportation, treatment, storage, or disposal of the substances; the degree of care exercised by the parties with respect to the substances involved; and the degree of cooperation of the parties with government officials to prevent any harm to public health or the environment. See *United States* v. *A & F Materials Co.*, 578 F. Supp. 1249 at 1256 (S.D. Ill., 1984). Of course, the burden of proof is on the defendant or party seeking apportionment to establish that it should be granted. *United States* v. *Chem-Dyne Corp.*, 572 F. Supp. 802 at 810 (S.D. Oh., 1983).

New subsection 113(f)(2) of CERCLA also clarifies that entry into a judicially approved settlement with the government protects a party only against the contribution claims of other potentially liable parties, and not against indemnification claims. Contribution is a statutory or common law right available to those who have paid more than their equitable share of an entire liability. Indemnity is a right arising from a contract or a special relationship between parties. Settlement with the government under CERCLA should not abrogate independently existing rights of persons to indemnity.

This subsection also makes clear the distinction between parties to the settlement agreement (who are discharged from liability by the agreement) and other persons who are potentially liable under section 107. These other persons remain potentially liable for the amounts not received by the government through the settlement. The subsection emphasizes this distinction by using the terms "person" and "potentially liable persons" in place of the terms "party" and "parties."

The last sentence to subsection 113(f)(2) precludes protection from claims for contribution if the settlement was achieved through fraud, misrepresentation, other misconduct by one of the parties to the settlement, or mutual mistake of fact.

New subsection 113(f)(3)(A) of CERCLA affirms the ability of the United States or a State to maintain an action for injunctive relief under section 106 or cost recovery under section 107 against nonsettlors when a settlement does not provide complete relief. The right of the United States to proceed under section 106 or 107 is unaffected by its status as an owner or operator of a facility of a generator of waste at the site. In addition, when the United States has been required to pay response costs as a liable party, the United States may maintain an action to recover costs from other responsible parties.

New subsection 113(f)(3)(B) of CERCLA expressly provides to those who enter into administrative or judicially approved settlements with EPA the right to seek contribution from other responsible parties who do not enter into settlements. This provision was included to encourage settlements and to avoid problems that might otherwise arise due to the courts' reluctance to imply new private rights of action under federal statutes.

Finally, new subsection 113(f)(3)(C) provides that the United States' rights against nonsettling parties under the section are superior to the rights of private settlors, but should not necessarily be superior to the rights of the States against nonsettling parties. This subsection ensures that the United States and the States have equivalent rights under the section.

II. Statutes of Limitations: New Subsection 113(g) of CERCLA

Cost recovery and damages actions should be brought at the most appropriate time in light of the response action taken. In general, these actions should be brought as early as EPA has the necessary information to do so. Therefore, this subsection provides revised statutes of limitation for bringing natural resource damages actions and cost recovery actions under section 107.

New section 113(g)(1) of CERCLA alters the statute of limitations for natural resource damages. It ensures that actions for natural resource damages are filed at the most appropriate time for the particular site involved. Because a remedial action at the site may include the restoration, rehabilitation, or replacement of natural resources, and action for natural resource damages for a site on the National Priorities List (NPL) should not take place before the remedy has been selected, unless the Administrator is diligently proceeding with a remedial investigation and feasibility study under section 104(b). The limitation established by the subsection on filing damages actions before selection of the remedy does not apply to actions filed before expiration of the original statutory deadline for recovery of pre-CERCLA damages. Actions filed subsequent to that time in cases where the remedy has not yet been selected should be dismissed without prejudice by the courts as unripe for review.

This subsection recognizes that the natural resource damages assessment at NPL sites should, whenever possible, take place while the remedial investigation and feasibility study (RI/FS) is underway. It also recognizes that the planning of any restoration or rehabilitation efforts should, whenever possible, be integrated with the planning of the remedial action. The limitation period running from completion of the remedial action will allow integration of cost recovery and damages actions. The subsection also contemplates that the court will review the record compiled to determine the remedy together with the record compiled for assessing damages, and will, wherever practicable, rule on them together. For sites not on the NPL or not otherwise scheduled for remedial action, the three-year limitations period (following discovery of the loss) will apply.

New subsection 113(g)(2) of CERCLA provides that, as to removal actions under subsection 113(g)(2)(A), the government will be required to bring a cost recovery action within three years after completion of the removal action, except when a waiver to allow for continued response actions has been granted under section 104(c)(1)(C). In the event of such a waiver, the cost recovery action must be brought within six years of the granting of the waiver. For remedial actions under subsection 113(g)(2)(B), the government will be required to initiate its action within six years of the initiation of physical, on-site construction of the remedy.

New subsection 113(g)(2) contemplates that there may be successive cost recovery actions brought at various points during implementation of a remedial action. The statute of limitations for the intital cost recovery action for a remedial action is six years from the commencement of physical on-site construction of the remedial action, that is, after the RI/FS and after design of the remedy. However, the final cost recovery action must be commenced within three years of the completion of the remedial action. If a remedial action is commenced within three uears of the completion of a removal action, costs incurred in the removal action may be added to those sought for the remedial action. In other words, there is no intention to mandate separate cost recovery actions for removal and remedial actions so long as they follow each other within a three year time period. In the initial cost recovery action, in order to conserve judicial time and resources, the court is to enter a declaratory judgment on liability for response costs; this judgment will be binding in future cost recovery actions to obtain additional costs. This provision addresses the concerns raised by the court in *United States* v. *Mottolo*, No. 83-547-D (D.N.H. July 18, 1985, and August 15, 1985) (orders issued). Of course, the alternative of a single phased trial dealing sequentially with the recovery of costs for different segments of the response action remains available.

III. Pre-enforcement Review: New Subsection 113(h) of CERCLA

H.R. 2817 adds a new subsection 113(h) to CERCLA. This subsection is based on the premise that somewhat broader access to judicial review of the selection of a response action need not prevent expeditious clean-ups, and that the availability of such review is necessary as a check on agency decision-making and to assure the selection of proper action.

At the same time, however, the subsection ensures that the clean-up of sites will not be delayed by this additional access judicial review. Thus, in the absence of a government enforcement action, judicial review of the selection of a response action should generally be postponed until after the response action is taken. Similarly, in an enforcement action, the scope of judicial review is limited to reviewing the enforcement requested.

New subsections 113 (h)(1) and (h)(2) reiterate the current ability of affected parties to obtain review of the Administrator's selection of response actions when the government has instituted an action for cost recovery, an action to enforce an order under sections 104(b) or 106(a), or an action to recover penalties for the violation of such an order. However, when the government seeks to enforce an order for an RI/FS under section 104(b), the court's review of the order is limited to issues concerning performance of that study, and may not extend to questions relating to the scope of the remedy. These two paragraphs now set forth in statutory language the only type of review that courts have generally interpreted as being available under the CERCLA as originally enacted.

New section 113(h)(3) provides an opportunity for review of an action brought under new section 106(b)(2)—when a party has received and complied with the terms of a 106(a) order and then petitions the Administrator for reimbursement of costs associated with compliance. Because the reasonableness of the order will be explored in the reimbursement hearing, and because the parties receiving the order have cooperated with the Administrator in complying with the order, review at this point will be desirable for the parties and will not needlessly disrupt the clean-up process.

New subsection 113(h)(4) clarifies the right of persons to seek review of response actions under the new citizens suits provision of CERCLA which would be established by this Act (Section 207 of H.R. 2817, new Section 310 of CERCLA). Actions under this provision will be subject to all the bars and time limits set forth in the citizens suits provision.

This subsection is not intended to allow review of the selection of a response action prior to completion of the action: the provision allows for review only of an "action *taken* . . ." (Italics added). Thus, after the RI/FS has been completed, the remedial action has been selected and designed, and the construction of the selected action has been completed, persons will be able to maintain a suit to ensure that a response action is consistent with the requirements of the Act.

New subsections 113(h)(7) and (8) provide two additional narrow exceptions to the general rule postponing review until the government undertakes enforement activities. These subsections were included because potentially responsible parties who are willing to commit to undertaking a remedial action should be able, like those under new subsection 113(h)(6), to petition the court for early resolution of disputes over the Administrator's selection of a remedial action. Thus, new subsection 113(h)(7) allows for review when a consent decree under section 106 specifically provides for the party's performance of the remedial action and the only issue outstanding is the scope of the remedial action. New subsection 113(h)(8) allows for review when a potentially responsible party has agreed, without admitting liability, to the terms of an administrative order except for the scope of the remedy. Such parties will have obligated themselves to perform the remedy and the only issue the court will be reviewing under the order will again be the scope of the remedy.

Subsection (h) states that in actions brought under subsections 113(h)(6), (7), and (8), where review of the remedy is occurring pursuant to a consent decree or administrative order, the courts should rule expeditiously. This will allow remedial actions to proceed without delay in order to ensure rapid cleanups. Furthermore, to avoid undue delay, the subsection provides that all parties will be bound by the district court's decision and that the parties may not appeal that decision.

In general, new subsection 113(h) contemplates that the courts will grant a stay of the performance of a response action only rarely, if at all, because of the importance of expeditious clean-up of hazardous waste sites. A litigant seeking a stay must, as in any similar action, be able to establish irreparable harm and the likelihood of success on the merits. Financial loss to a potentially responsible party will not suffice to establish irreparable harm, particularly in view of the reimbursement provision set forth in new subsection 106(b)(2) of CERCLA (discussed below). Moreover, in these under CERCLA, a party seeking a stay must establish that the stay would be in the public interest.

IV. Intervention: New Subsection 113(i) of CERCLA

New subsection 113(i) of CERCLA provides that any person may intervene as a matter of right when that person has a direct interest which is or may be adversely affected by the action, and the disposition of the action may, as practical matter, impair or impede the person's ability to protect that interest. When a motion to intervene is granted under this section, the intervenor shall only be able to raise issues relating to the selected remedy. Issues not directly related to the selection of remedy should not be entertained by the court because the purpose of review under new subsection 113 of CERCLA is only to resolve issues relating to the remedy. Moreover, nothing in this provision is intended to make intervenors necessary parties to any consent decree referred to in this section or to interfere with the rights of the United States to enter into settlements with potentially responsible parties under this Act.

V. Judicial Review: New Subsection 113(j) of CERCLA

New subsection 113(j) sets forth new administrative procedures so that Superfund decision-making will more closely parallel standard administrative practice.

New subsection 113(j)(1) clarifies that judicial review of the Administrator's selection of a response action shall be based on the administrative record developed pursuant to subsection 113(k)(2). The purpose of this modification is to ensure that the Administrator's decision will be based on adequate information to which the public and potentially responsible parties have access.

New subsection 113(j)(2) provides that the administrative record which is the basis for judicial review may be supplemented by new objections and evidence that were not reasonably available when the administrative record was developed. This is consistent with accepted administrative practice.

New subsection 113(j)(2) states that the appropriate standard of judicial review for EPA decisions on response actions is "arbitrary and capricious or otherwise not in accordance with the law." This standard also applies to property reimbursement actions under new subsection 106(b)(2)(B) of CERCLA as established by subsection 113(d) of H.R. 2817. This standard, in use for many years under 5 U.S.C. 706(2)(a), is one with which courts and litigants are familiar and is the standard of review best suited to the type of decisions reached under the Act. Its application to these proceedings will produce a minimum amount of litigation in order to define its scope and application. The creation of new and ill-defined standards of judicial review is unnecessary. Moreover, the creation of such standards, without any clear definition of their impact, results in a waste of judicial resources. Additionally, such new standards generally result in pointless costs to litigants.

VI. Administrative Record and Participation Procedures: New Subsection 113(k) of CERCLA

New subsection 113(k) provides minimum participation requirements for removal actions in new subsection 113(k)(2)(A) and for remedial actions in new subsection 113(k)(2)(B). Generally, these provisions require that EPA base its selection of a clean-up remedy on the administrative record established under section 113(k) and that judicial review of EPA's decision be based on the same administrative record.

In addition, EPA is required under new subsection 113(k)(2)(A) to develop procedures for participation in the selection of a removal action. New subsection 113(k)(2)(B) sets forth specific participation procedures for the selection of a remedial action, including the requirements that: the material generated pursuant to the "on site" public participation procedures of new section 117 of CERCLA be placed in the administrative record established pursuant to section 113; the administrative record be available at or near the specific Superfund site; and the potentially responsible parties, as well as other interested persons, be notified of the intent to select a remedy and of the participation process.

New subsection 113(k)(2)(C) states that the failure of EPA to satisfy the requirement that it notify potentially responsible parties and others of its intent to select a remedy will not constitute a defense to liability under CERCLA. While potentially responsible parties will be notified when feasible, this provision also ensures that the failure of EPA to notify such parties will in no way prevent or delay a clean-up action or increase legal rights or remedies available to these parties.

VII. Reimbursement: New Subsection 106(b) of CERCLA

Section 113 of H.R. 2817 adds a new provision to section 106(b) of the CERCLA regarding reimbursement. Under this provision, responsible parties may seek reimbursement not only when they comply with an administrative order, but also when they enter into a consent decree and agree to undertake the work even though they believe that the administrator's remedy is arbitrary or capricious. (See discussion of the reason for selecting this standard of judicial review in paragraph V, above.) If a court determines that a portion of the remedy is arbitrary and capricious or otherwise not in accordance with the law, the responsible party shall be reimbursed for the reasonable costs attributable to the portion of the response action held to be arbitrary and capricious or otherwise not in accordance with the law. By virtue of this provision, responsible parties are expected to continue work during judicial review.

NEW SECTION 117 OF CERCLA: PUBLIC PARTICIPATION

New section 117 of CERCLA requires EPA to involve the community affected by a particular hazardous waste site in the process of deciding what actions are necessary to complete clean-up of that site. As the Energy and Commerce Committee stated in its report:

"The Energy and Commerce Committee is of the strong opinion that communities affected by Superfund sites will demonstrate much stronger support for actions necessary to clean up those sites if the community is involved from the beginning in determining the actions which will be necessary to complete the cleanup." *Superfund Amendments of 1985*, H. Rpt. 99-253, Part 1, August 1, 1985, p. 90.

New section 117 of CERCLA contains a provision in subsection 117(d) which conforms the requirements of this section to new subsection 113(k). Thus, materials produced under section 117 shall be included in the administrative record on which the decision is based and the entire administrative record shall be available at or near the specific Superfund site. Persons who are directly affected by the hazardous waste site should have ready access to these important documents.

NEW SECTION 119 OF CERCLA: RESPONSE ACTION CONTRACTORS

Response action contractors (contractors) carry out the clean-up of hazardous waste sites under Superfund. Historically, contractors have sought sufficient insurance to protect against potential liabilities from third party claims and government lawsuits. These claims and suits are made on the basis of evolving state and Federal laws (including CERCLA), which have increasingly subjected contractors to strict or near absolute liability standards.

At present, insurance availability for response action contractors is diminishing, limits of coverage are being reduced, and premium rates are increasing by more than 50%-200%. Insurance industry sources estimate that only 10% of contractors' market needs are currently being met by insurers, and that by January, 1986, no insurance will be available. The present lack of insurance is already causing a reduction in the number of qualified contractors willing to participate in Superfund cleanups. As insurance becomes increasingly unobtainable over the next year, the availability of qualified contractors could diminish to the point of being acute, and the Superfund clean-up program could come to an abrupt halt.

It is important to understand that the principal risks normally covered by liability insurance are to defend against claims alleging negligence, and, if negligence is proven, to satisfy such claims. Put more simply, liability insurance covers negligence.

New section 119 of CERCLA eliminates strict, joint and several liability for response action contractors. Instead, these contractors will be liable only if their actions at a site are negligent or grossly negligent, or if they constitute intentional misconduct. This limitation on liability was included in order to ensure that companies will be willing to perform clean-ups in the future, and in order to give a reasonable incentive for insurers to provide prospective insurance based on the traditional standard of performance that insurers cover (i.e. negligence). However, the current condition of the insurance industry (e.g., financial instability, lack of adequate insurance capacity) will probably prevent insurers from providing adequate coverage to contractors for several years, even with the inclusion of this provision.

Currently, EPA tries to address this problem by agreeing to provide contractors with indemnification in the event of their negligence, except for cases involving gross negligence. Contractors contend that these EPA indemnification agreements are ineffective as substitutes for insurance for several reasons. First, Superfund does not directly authorize the obligation of resources for the purpose of indemnification. Consequently, claims based on these agreements may be held invalid under the Anti-Deficiency Act. Second, EPA indemnification is not available for all contractors (e.g., those performing clean-ups for States, other Federal agencies, and potentially responsible parties) who work under superfund. Third, the indemnification agreements use Superfund as the source of funding as opposed to general appropriations (the typical source of funding for Federal indemnification). Consequently, the indemnification is only good for the life of Superfund, and, therefore, does not provide sufficient "longterm" protection from liability.

For those reasons, new section 119 of CERCLA authorizes indemnification agreements as a substitute for liability insurance when such insurance is either unavailable or insufficient.

New subsection 119(c) authorizes the EPA Administrator to agree to indemnify response action contractors (including subcontractors) for liability arising out of the contractor's performance. The indemnification agreements may cover only liability which results from negligence; they may not cover liability arising from gross negligence or intentional misconduct on the part of the contractor. Thus, this section allows EPA to provide coverage equivalent to liability insurance. In combination with the new standard of liability for contractors contained in H.R. 2817, this will provide adequate incentives for contractors to continue to participate in Superfund clean-ups.

The indemnification authority provided by this section may be offered *in the discretion* of the Administrator. Moreover, the provisions set forth a series of requirements and limitations to ensure that EPA agrees to provide indemnification only in appropriate cases and in an appropriate fashion. In particular, the provision continues to give contractors a financial incentive to operate in a safe fashion by requiring the imposition of deductibles and limits on the amount of indemnification that will be available.

New subsection 119(c)(3) directly exempts EPA indemnification authority from Anti-Deficiency Act provisions and establishes general appropriations, not Superfund, as the source of funds for indemnification. Again, these steps are necessary to address the legitimate hazardous waste long-term liability concerns of contractors.

It is important to emphasize the requirement that indemnification agreements may be made by EPA only when a contractor has made genuine efforts to obtain adequate insurance and has found it to be unavailable. Moreover, any indemnification agreement may provide protection only as to harm resulting from the fact that the contractor is cleaning up a hazardous waste site. Work-site accidents and injuries for which insurance is available cannot be covered by these agreements. If, for example, a truck driver for a contractor hits and injures a person, this accident should not fall within the scope of an indemnification agreement. In addition, if in the same accident property is damaged or destroyed, the indemnification agreement should not cover these losses. However, coverage would be triggered if the truck were carrying hazardous wastes from the site and the accident caused leakage of hazardous waste. In such a situation, the indemnification should cover harm resulting from that leak.

In general, any indemnification agreed to should relate to the nature and magnitude of the risks involved in the response action being undertaken by the contractor. The main purpose of this provision is to ensure that these contractors will reenter the market, thus any indemnification agreement must address the legitimate risks their work entails.

Finally, by simply authorizing EPA to provide indemnification, the Committee intends to allow for flexibility if regular marketplace forces lead to the availability of insurance for response action contractors in the future. In this event, EPA should not agree to provide indemnification.

In summary, this provision for indemnification, in combination with the new liability standards for contractors established by H.R. 2817, addresses two major problems created by the current liability insurance shortage. First, it provides a reasonable incentive for insurers to provide prospective insurance to contractors. Second, it recognizes that regardless of the liability standard, it will be some time before insurers can provide adequate insurance, and, therefore, it provides an interim form of protection to keep the Superfund clean-up program functioning until insurers re-enter the market.

NEW SECTION 122 OF CERCLA: SETTLEMENTS

New section 122 of CERCLA sets forth a series of provisions designed to encourage and facilitate negotiated private party clean-ups of hazardous substances in those situations where negotiations have a realistic chance of success. Such negotiated clean-ups will accelerate the rate of clean-ups and reduce their expense by making maximum use of private sector resources, although an emphasis on negotiated clean-ups should not replace or diminish a strong and aggressive enforcement policy. Rather, it should complement such a policy.

I. New Subsection 122(a) of CERCLA

New subsection 122(a) of CERCLA requires the Administrator to provide notice and an explanation to potentially responsible parties whenever the Administrator decides not to use the settlement provisions of the Act. This notice and decision shall not, however, be subject to judicial review. This provision is intended to encourage the Administrator to carefully consider entering into settlement procedures in appropriate cases; it is *not* intended to create any new legal rights for potentially responsible parties.

In connection with subsection 122(a), it is important to note that the authorization to enter into a settlement agreement with any person to "perform" a remedial investigation or any other response action includes more than an agreement by that person to directly undertake a response action. This subsection also contemplates that the Administrator may reach agreements where the parties to the settlement undertake to arrange for performance of the response action. Circumstances may vary widely, from site to site, including the number of potentially responsible parties; the legal obligations of specific parties; the rights of parties as against each other; the geological and other characteristics of the sites; and the quantities and types of materials taken to the sites. It is therefore important that the Administrator have the flexibility to reach settlements required to avoid unnecessary delays and excessive transaction costs. Agreements in which potentially responsible parties arrange for the work to be performed may be reached by the Administrator and may be preferable to the other parties, since the site may be located far from their facilities or personnel. Thus, a settling party may agree to hire a contractor to carry out a response activity, or may agree to establish and fund a trust, along with other responsible parties, that will in turn hire a contractor to perform the needed work. Such agreements to arrange for performance are clearly authorized by this section.

This type of settlement was reached, at the Enviro-Chem site in Zionsville, Indiana, where 269 companies entered into a consent decree to fund a trust that, in turn, paid an independent contractor (backed by a performance bond) to perform the work in accordance with technical specifications approved by the Administrator. This approach worked well. Negotiations and clean-up proceeded expeditiously; the contributing companies received an incentive in the form of a release when the trust was funded; transaction costs were held to a minimum; and both the Administrator and the State have subsequently concluded that the clean-up met applicable standards. Nothing in new section 122 of CERCLA should be construed to restrict or prohibit such settlements.

II. De Minimis Settlements: New Subsection 122(g) of CERCLA

New subsection 122(g) of CERCLA provides authority to the Administrator of EPA to enter into settlement with "de Minimis" contributors at a site. This provision authorizes the Administrator to enter into small "cash out" settlements with individual potentially responsible parties where the circumstances warrant such settlements.

The Judiciary Committee amendment strengthens the de minimis settlement provision in several respects.

First, new subsection 122(g) encourages the Administrator promptly to exercise his authority to settle with de minimis parties whenever such settlements are practicable and in the public interest. This requirement applies only when the resulting settlement would in any event involve only a minor portion of the response costs at the facility concerned and when the person seeking to settle satisfies certain criteria.

The first set of criteria defining the persons who may fall within the *de minimis* provision is set forth in subsection 122(g)(1)(A). If a person is a contributor of waste to the facility in issue, both the quantity and the hazardous effects of the substances contributed by the person to the facility must be minimal compared to the other substances at the facility in order for a *de minimis* settlement to be available.

These criteria are useful with respect to most of the categories of persons who may be liable under section 107(a) of CERCLA. However, they do not easily apply to a landowner who is liable as an "owner" of a "facility" under section 107(a), but who otherwise may be minimally related to the hazardous substance problem at the facility. Therefore, new subsection 122(g)(1)(B) provides that landowners may qualify for these expedited settlements. The criteria for this type of *de minimis* settlement require that the potentially reponsible party: (1) own the real property on or in which the facility is located; (2) not have conducted or allowed the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and (3) not have contributed to the release or threatened release through any act or omission.

In addition, such a landowner must not have had actual or constructive knowledge at the time the landowner purchased the property that such property was being or had been used for the generation, transportation, storage, treatment, or disposal of any hazardus substance. This additional requirement is intended, among other things, to preclude a settlement where a transfer of land is undertaken in order to avoid liability for a hazardous waste clean-up. In the event such a transfer occurs and there is a later settlement, the transfer would fatally taint that settlement and, if discovered at a later time, would be grounds for setting aside the setlement on the basis of fraud. It would also trigger the provision of new subsection 122(g)(5) of CERCLA which states that a fraudulent settlement does not provide protection against suits for contribution (discussed below).

To ensure that settlements with *de minimis* parties provide such parties with an appropriate level of finality, new subsection 122(g)(2) authorizes the Administrator to provide covenants not to sue or releases from liability when doing so is in the public interest.

Both types of *de minimis* settlements are intended to relieve the covered parties from prolonged and costly litigation. Thus, new subsection 122(g)(3) requires the Administrator to reach settlements in these cases as soon as the necessary information is available to establish the party's *de minimis* status. It is the clear intention that such settlements should be expedited and that every effort be made to reach them at the earliest possible moment. In the case of a landowner who meets the criteria for this subsection, settlements should be reached as soon as these criteria are established. There should be no need to wait until the completion of an RI/FS if the party's only connection to the hazardous waste site is ownership.

The settlement with a *de minimis* party may be incorporated into either a consent decree or an administrative order (as provided under new subsection 122(g)(4)). These settlements will protect the party against the contribution claims of other persons who are liable under the Act, unless a person seeking contribution can show that the settlement was achieved through fraud, misrepresentation, other misconduct, or a mutual mistake of fact (new subsection 122(g)(5)).

Although this provision is primarily directed toward private parties who are minimal contributors of waste or who are otherwise minimally related to the hazardous substance problems at a facility, federal agencies may also satisfy the *de minimis* criteria at particular facilities. Thus, when federal agencies fall within the criteria of this subsection, they too should be treated as *de minimis* parties.

In sum, as amended, the *de minimis* settlement provision is intended to confirm EPA's authority to enter into settlements which involve only small portions of total clean-up costs when the settlements are with potentially responsible parties who would not be responsible for a significant portion of such costs in any case. Settling with such parties early can simplify and expedite site negotiations. Allowing minor responsible parties to cash out also avoids the imposition of unnecessary negotiation or litigation costs on such parties.

III. EPA Cost Recovery Settlement Authority: New Subsection 122(h) of CERCLA

New section 122(h) of CERCLA authorizes EPA to enter into administrative settlement agreements for EPA claims under section 107, that is, for the recovery of costs that EPA has incurred in cleaning up a site on its own under section 104.

Such settlements will allow the Federal government to expeditiously resolve cost recovery disputes under CERCLA section 107 in order to replenish the Fund promptly and to minimize government and private legal costs. The government should also have the flexibility to use alternative forms of dispute resolution to reach such agreements, such as administrative negotiation and settlement or arbitration rather than only litigation.

Therefore, new subsection 122(h) to CERCLA gives EPA and other relevant agencies express authority to administratively settle claims of the United States for response costs and damages under section 107. It also provides express authority to engage in arbitration of disputed claims under section 107.

Confirming that EPA has such authority will enable the burden of non-complex cost recovery cases that are likely to settle to be shifted from the Department of Justice to EPA. It will also help to reduce the number of cases filed in federal courts and will foster the use of new methods of resolving Superfund cases. When potential settlements include claims for natural resource damages, the federal trustee for the resources in issue must be involved in the settlement process.

New subsection 122(h)(1) provides that claims in excess of $500,000 may be compromised only with the prior written approval of the Attorney General or his designee. This approval requirement for large settlements follows the general approach used in the Federal Claims Collection Act, 31 U.S.C. 2671. The $500,000 figure accounts for the scale of many response actions, particularly emergency removal actions that EPA and the Coast Guard perform on a regular basis. The Attorney General specifically retains his authority to approve settlements of claims greater than $500,000 because review and approval by the Justice Department will ensure that these large settlements do not adversely affect ongoing or potential litigation at a site. Such centralized review and oversight will also ensure that settlements of significant claims by diverse agencies and regional offices will be consistent nationally and over time. Finally, evaluating large settlement proposals involves the consideration of factors with which the Justice Department has had much experience, including the litigative risks of trying the case and the possible precedential value of the case.

New subsection 122(h)(3) provides, in conjunction with new subsection 122(h)(5), that the settlements or arbitrations will be binding absent some showing of misconduct or a mutual mistake by the parties to the settlement. New subsection 122(h)(4) provides that if a settling party fails to comply with the terms of the settlement, the Administrator or Secretary or other relevant department or agency head will request the Attorney General to enforce the settlement agreement in district court.

New subsection 122(h)(5) provides that parties who settle with EPA for past response costs are protected from the contribution claims of non-settling parties, whether or not the administrative settlement is entered as a judicially approved consent decree. If the plaintiff in a contribution action shows that the settlement was achieved through fraud or other misconduct, or a mutual mistake of fact between EPA and the settling party, the settlement will not provide immunity from contribution claims.

IV. Comment Period for Administrative Settlement: New Subsection 122(i) of CERCLA

New Subsection 122(i) provides for a thirty-day comment period before any settlement embodied in an administrative order under new subsection 122(h) (including settlements arrived at through arbitration) or any settlement reached under new subsection 122(g).

NEW SECTION 310 OF CERCLA: CITIZENS SUITS

Eleven Federal environmental laws now contain citizens suits provisions. These laws include the Clean Air Act, the Federal Water Pollution Control Act, the Toxic Substances Control Act, the Resource Conservation and Recovery Act (RCRA), the Noise Control Act, the Safe Drinking Water Act, the Endangered Species Act, the Deep Water Port Act, the Outercontinental Shelf Land Act, the Surface Mine Control and Reclamation Act, and the Marine Protection, Research, and Sanctuaries Act.

New section 310 of CERCLA would authorize citizens suits under Superfund. This provision would authorize citizens suits against persons alleged to be in violation of any requirement which is effective pursuant to the Act, as well as suits against government officials who are alleged to have failed to perform mandatory duties under the Act. It also authorizes suits to abate an imminent and substantial endangerment to health or the environment. Such suits will be available whenever an actual or threatened release of a hazardous substance poses an imminent and substantial endangerment to health or the environment.

One of the main reasons this authority to sue for "imminent and substantial endangerment" was added to CERCLA is that it is unclear whether citizens can use the citizen suits provision currently contained in RCRA to address all waste site threats. Each time a citizen currently brings a case under RCRA, the court must decide whether the substance is a solid waste under RCRA criteria in order to allow the suit to proceed. Thus, the only way to ensure that citizens have protection from all hazardous substances, including those that are not RCRA "hazardous wastes", is to authorize citizens suits under CERCLA. With this amendment, plaintiffs and the courts will not have to waste time and resources in determining that a non-listed substance is a solid waste under RCRA. Citizens should be able to sue to protect themselves from dangerous chemicals regardless of whether EPA has formally listed the chemical under RCRA.

Another reason for this provision is that currently existing nuisance and trespass laws are inadequate to deal with hazardous waste sites. In most states, nuisance law allows only landowners to sue. In addition, nuisance law in most states can only provide monetary compensation for injury already suffered, whereas this provision authorizes suits for threatened releases with the result that citizens suits could *prevent* health risks to people from exposure to toxics. Trespass law is also inadequate because it normally allows only landowners to sue, and each landowner can usually sue only to protect himself rather than the entire community. Also the landowner must usually meet the difficult burden of proving that hazardous substances have trespassed onto his property.

Under new subsection 310(i), suits for imminent and substantial endangerment would be precluded as to any federally permitted release.

Under new subsection 310(j), suits would be precluded for the normal application of pesticides registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), or for any application of a pesticide otherwise authorized under FIFRA. This provision recognizes that FIFRA, originally enacted as Public Law 94-51 and classified 7 U.S.C. 136 *et seq.*, specifically authorizes the use of pesticides in the following instances in addition to the uses for which they are registered: 7 U.S.C. 136c(c) authorizes experimental use permits; 7 U.S.C. 136p authorizes emergency use; 7 U.S.C. 136v(c)(1) authorizes use for a special local need; and 7 U.S.C. 136a(c)(1)(ii) and 136d(a)(1) authorize the use of accumulated stocks when the registration is cancelled or suspended.

Allowing citizens to sue those responsible for imminent and substantial endangerment will not make it difficult for EPA to carry out orderly action on its priority sites. These suits will be against the responsible party, not EPA. As with any other citizen suit, the citizens must notify EPA 60 days prior to filing suit so that EPA will have the opportunity to take enforcement action against the endangerment. To ensure that these suits, as well as those brought under new subsection 310(a)(1)(A), will in no way interfere with government enforcement actions, new subsection 310(d)(2) precludes citizens from bringing suits under the entire section if EPA is diligently pursuing an administrative order or civil action against the parties responsible for the hazardous waste. A similar bar is established by new subsection 310(d)(3) if a state is diligently pursuing action against the endangerment. Only if EPA or the State chooses not to become involved can the suit proceed. Thus, the suit would in no way burden EPA or divert EPA's resources from the priority sites or from ongoing enforcement activities. As modified, these bars apply to suits alleging violations of CERCLA as well as to those alleging an imminent and substantial endangerment.

The terms "diligently pursuing" and "diligently prosecuting", as applied to the type of activity by EPA or a State that bars citizens suits, mean that aggressive Federal or State enforcement action is underway regarding the subject of the suit. The purpose of these bars is to ensure that such enforcement actions will not be deterred by the diversion of resources that such suits might otherwise engender. The bars are also necessary to avoid the confusion or termination of settlement negotiations because EPA, a State, or potentially responsible parties face citizen suit litigation relative to the matters under negotiation. The basic concept is that the purpose of citizens suits is to augment, not duplicate, government enforcement efforts. Consequently, instances where EPA or a state are involved in good faith negotiations will be protected from the drain and disruption that might otherwise be created by citizens suits.

On the other hand, "diligent pursuit" *does* require a vigorous and active enforcement effort as to the subject of the suit. It certainly does not contemplate "intentions" or "plans" on the part of EPA or a State to address the matter at some time in the future. Moreover, EPA or State action must be capable of providing relief similar to that which courts can dispense in citizens suits. In other words, a necessary condition of a finding of diligent government action is the expenditure and commitment of resources by EPA or the State to actively address the subject of the suit.

New section 310(c) of CERCLA states the type of relief that courts are authorized to grant in actions claiming an imminent and substantial endangerment: "to immediately restrain any person contributing to the endangerment . . . to order such person to take response actions as provided for under this Act". Under this language, the courts are authorized to grant only that injunctive relief which is consistent with the kinds of response actions that EPA is authorized to take under CERCLA. This will avoid the creation by the courts of response actions and remedies that vary widely from the actions selected or approved by EPA under the Act, and will lessen the necessity for EPA to intervene in these suits to ensure that these actions do not result in anomalous and potentially troublesome remedies. This language confirms that the cause of action for abatement of an imminent and substantial endangerment, like the one added to the Solid Waste Disposal Act in 1984, is designed solely to aid in the clean-up of hazardous substances.

The type of relief set forth in new subsection 310(c) is consistent with that available for other actions authorized by this new citizens suits provision. These suits may also be brought for injunctive relief only, i.e., citizens may seek a restraining order against private parties and/or a mandamus order to require the EPA or other relevant agency to perform a mandatory duty under CERCLA. None of these actions are for money damages. They are actions directly related to the principal purpose of the Superfund law—i.e., to bring about quick identification and effective clean-up of dangerous hazardous substance releases.

New subsection 310(h)(2) of CERCLA provides a right to intervene in actions brought under section 310 to any person who has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest, unless the Administrator or the State shows that the person's intent is adequately represented by existing parties in the action".

This provision creates a statutory right for citizens who would be affected by actions brought under new section 310 to intervene in these actons. It is designed primarily to protect the interests of those who own property in proximity to a Superfund site, and is similar to statutory intervention provisions contained in other federal statutes, including RCRA, the Toxic Substance Control Act, the Clean Air Act, and the Safe Drinking Water Act.

Without this provision, Rule 24 of the Federal Rules of Civil Procedure would govern the right of citizens to intervene in such cases. In order to succeed to a Rule 24 motion, a party has the burden of establishing that no other party to the suit, such as EPA or a state, adequately represents the moving party's interest. The case law that has been developed under Rule 24 creates a presumption of adequate representation by government agencies, which essentially can be overcome by the moving party only by demonstrating bad faith or malfeasance. That is a very difficult burden to meet. Citizens, under Rule 24, are thus forced to spend a substantial store of their resources merely in establishing their right to be in court. This obviously depletes the resources that they would otherwise have available to address the substance of their claim. This amendment would shift to the EPA or to the State the burden of establishing that it adequately represents the citizen's interest.

Given the very broad authority that courts have today to deny intervention motions, citizens with limited resources face almost insurmountable barriers to protecting their interests. This amendment, with ample precedent in the federal statutes mentioned above, would appropriately lower those barriers.

The new citizens suits provision set forth in Section 310 will assist in accomplishing the goals of CERCLA: the clean-up of hazardous waste sites. It provides important safeguards to protect against government inaction or violations of the Act. In view of the government's limited and overburdened enforcement authority, citizens suits are essential to assure compliance with the law.

Mr. Chairman, I would like to say that this legislation not only is critically important in order to ensure the process of cleaning up sites, but it is clearly the most complicated piece of legislation I have ever had the opportunity to deal with since I have been in Congress.

I would like to pay special tribute to the staff of not only this committee but all committees who worked incredibly hard to come up with a Rubic's Cube arrangement that works, I think. At least we hope it will work to clean up sites.

On the Judiciary Committee we have Janet Potts and Bill Shattuck and Kevin Richardson on the minority side, but in all the committees, if it were not for the staff, this whole process would have broken down and we would have had no bill whatsoever.

Finally, I would like to say one point unrelated to the Judiciary Committee. While I have not been involved in the Ways and Means aspects of the bill, it does seem to me that if we are going to ask Americans to pay for a cleanup involving waste sites all over this country. That the tax to pay for those sites ought to be broad-based and not limited to a certain number of industries. It is true that the oil industry and the chemical industry are responsible for the raw product, but the fact of the matter is that hazardous wastes are used by everybody else in our society, from the medical profession to agriculture to all sorts of business. Therefore, the broad-based tax does seem to be more fair and reasonable than does a tax geared and designated to those who just produce the chemicals in the first place. I would urge the adoption and retention of the Ways and Means Committee tax provisions.

Mr. Chairman, I reserve the balance of my time.

Mr. **KINDNESS**. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, today the House considers this compromise version of the Superfund Reauthorization bill, and I am very happy to see this day arrive. I, for one, am pleased that we finally brought this legislation to the floor in a setting that suggests that there will be prompt action by this House and presumably by the other body so that within the paramenters of what we had to consider within the Committee on the Judiciary, I have a few comments to make.

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I would be remiss if I did not mention those areas in which I think there could still be additional work done, and I would like to offer my compliments to those members of the various committees and the staffs of the various committees that were involved for the excellent work that has been done.

Perhaps one of the most important issues within the entire Superfund Program is the establishment of the citizens suit provision. Some might say, well, we have so many of them in the law already, we have too many, and this has created quite a burden upon the Federal court system.

Well, I intend to support the compromise bill on this and other points, but I feel that the House might want to call special attention to certain portions of this provision in its conference negotiations with the other body.

Although the Commerce and Public Committees, along with the Judiciary Committee, all reported citizen suit provisions, they were quite different in scope and impact.

The substitute bill contains portions of each of the three committee versions that attempts to balance the rights of citizens with the need to have prompt cleanup of sites without needless and expensive litigation.

Despite the substantial efforts of those involved in the compromise negotiations to encourage and facilitate greater use of preenforcement settlement negotiations as an element of the Government's cleanup program, the substitute approach still could leave some question as to whether citizens can bring their actions during active negotiations by the Federal Government or by a State government which has given notice of its intent to bring suit.

States and private citizens are not obliged to observe the negotiation procedures applicable to the Federal Government. Litigation apparently could occur during that time.

Time prohibited the committees and staff people from adding appropriate language in the compromise substitute to address this issue very specifically, but I would hope the language to solve the problem could be worked out in conference with the other body.

Mr. Chairman, I understand there is at least one remaining area of disagreement concerning the critical issue of claims being created by this new citizen suit language. The Judiciary Committee amendment to the original bill provided grounds for citizen suits against any person who has contributed or is contributing to the actual or threatened relief of any hazardous substance from a facility, if such release may present an imminent or substantial endangerment to health or to the environment.

The compromise version provides for a suit against any person who has contributed or is contributing to the release or the threatened release of any hazardous substance from a hazardous waste disposal site, not a facility.

Now, I understand that my good friend, the gentleman from Kansas [Mr. GLICKMAN], will offer an amendment to return to the original language as reported by the Judiciary Committee. I am afraid I will certainly have to oppose that amendment, as I believe the compromise approach better serves the interests of balancing the rights of citizens with a need to assure prompt cleanup of waste sites.

I believe in the spirit of the compromise that has been worked out, we ought to go with the language that we have before us.

My second principal concern is that of liability affecting response action contractors, those people who clean up our Nation's hazardous waste disposal sites. At present, insurance availability for contractors is diminishing and limits of coverage have been reducing and premium rates have been increasing, some by as much as 50 percent to 200 percent. Insurance industry sources estimate that only 10 percent of contractors' market needs are currently being met. By January 1986, possibly no new insurance will be available at all. The present lack of insurance is already causing a reduction in the number of qualified contractors willing to participate in Superfund cleanups. As insurance becomes increasingly unavailable over the years and over the next year in particular, the availability of qualified contractors could diminish to the point of being acute. As a result, the Superfund cleanup program could indeed come to an abrupt halt.

Although the substitute bill still requires fine tuning, it goes a long way toward addressing most of the concerns that I have described. It is still my hope, as well as my understanding, that what is in the bill will be maintained through conference with the other body.

Finally, Mr. Chairman, I must state my strong opposition to a Federal cause of action for personal injury and property damage. It is my understanding that our colleague, the gentleman from Massachusetts [Mr. FRANK] will offer an amendment to provide such a cause of action. It is my hope that the House will again this year reject this ill-conceived notion, as it did in last year's Superfund legislation.

To begin with, my opposition to a Federal cause of action is based on the fact that this Superfund is a cleanup law, not a compensation law. The bill being considered by the House today is focused on cleanup activities and all the committees which worked on the bill specifically excluded Federal cause of action. Such a proposal should have had an airing in the Committee on the Judiciary if it was to be considered seriously.

The gentleman did not offer the amendment in the Committee on the Judiciary. I think it is too late. This is not the time and a separate bill ought to be considered in that committee for that purpose.

Mr. Chairman, I would urge my colleagues to favorably consider the content of the compromise portion of this bill and urge that it be adopted substantially as is.

Additionally, I might just note a couple of other points I consider important for the House to examine:

First, proponents fail to recognize that liability under the Frank proposal would be triggered by such nonevents as the mere deposit or storing of a hazardous substance. Consequently, given the liability standard of near-absolute, joint and several liability imposed by the amendment, liability could attach to a party without that party having contributed to the event that actually causes the harm.

Second, one of the so-called defenses provides relief from liability if the defendant established by a preponderance of the evidence that it took precautions against foreseeable acts or omissions of any (such) third party and the consequences that could foreseeably result from such acts or omissions.

This effectively casts each party to a site in the role of insurer of all other site-users/participants. This is almost certainly an impossible task to meet and provides absolutely no meaningful relief. In fact, each site user not only becomes liable for the actions of all concurrent users but all past users—over which control is absolutely impossible.

Third, persons held liable under the amendment include "any person who owned or operated the facility at which the release occurred at the time any hazardous substance was disposed of at such facility." This means that past site owners/operators can be held liable for damages for substances that were not even disposed of

when they owned or operated the site.

Fourth, pain and suffering are compensable except to the extent that they are a result of an individual's unreasonable fear of physical injury, illness or death. This departs from long-established tort law which has never granted relief for speculative damages. The Frank amendment language would cast Federal courts into the role of determining what "reasonable" fear might be in any given circumstance, hence requiring them to speculate as to what any person's damages may or may not be.

Fifth, the Frank amendment would effectively repeal rule 23 of the Federal rules of Civil Procedure. By requiring that actions under the title arising from the same release be certified as a class differences between each individual's condition "in the class" are ignored.

Sixth, lastly, proponents of this cause of action have specifically exempted the United States, States and local governments from liability under this statement. The Congressional Budget Office last year stated that the potential liability of the United States under such a cause of action would be impossible to estimate and could add significantly to the costs of the Federal Government. By specifically removing the United States, States and local governments from this liability, the proponents have admitted that liability under this title is essentially indefensible given its scheme of near-absolute, joint, several and noncausal nexus liability. Given this admission, can Congress truly entertain such a proposal?

I would add, Mr. Chairman, my commendations and thanks for the fine and professional staff work of William Shattuck, Janet Potts, and Kevin Richardson of the Committee on Judiciary staff, in dealing with this legislation.

The balance of my time, Mr. Chairman, I would like to reserve, subject to first yeilding, if the gentleman from Kansas has no other speakers to yield to at the moment.

The CHAIRMAN. The gentleman from Kansas does have another speaker. It is the intent of the Chair to recognize the gentleman from Kansas and then come back to the gentleman from Ohio.

The Chair recognizes the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Mr. Chairman, I yield 4 minutes to the gentleman from Virginia [Mr. BOUCHER].

(Mr. BOUCHER asked and was given permission to revise and extend his remarks.)

Mr. BOUCHER. Mr. Chairman, I thank the gentleman from Kansas for yielding time to me.

Mr. Chairman, I join my colleagues on the Judiciary Committee in urging passage of H.R. 2817. The bill is a thoughtful measure which will facilitate the cleanup of hazardous waste sites nationwide.

I want to pay special tribute to the provision which allows citizens to sue in Federal court to obtain compliance with the Superfund law and to protect themselves from the release of hazardous substances which threaten their health or the environment.

This right is essential to proper Superfund law enforcement in those cases where there is an imminent and substantial endangerment and where the proper Government authorities fail to act.

It is carefully drafted to ensure that citizen suits will not interfere with EPA enforcement of the Superfund law. In fact, citizen suits are prohibited where either the EPA or a State is diligently enforcing the law or moving to abate an imminent and substantial endangerment. Under this provision citizens can sue only after the failure of EPA or a State, following 60 days notice, to move to abate the problem.

Under this measure, only injunctive relief may be obtained in citizens suits. Since money damages cannot be awarded, there will be no incentive to abuse this right of action.

I think it is appropriate to emphasize that 11 Federal environmental statutes, including the Clean Air Act, presently contain citizen suit provisions essentially similar to this provision. There is no evidence that the exercise of these statutory rights have overburdened the Federal courts. At the same time, they have provided, as would this new citizen suit provision, a critically important avenue for citizens to obtain enforcement of the law.

The intent underlying the citizen suit provision is to allow citizens to augment, not duplicate, Government enforcement efforts, and to permit citizens to obtain prospective protection of their communities from grave hazards to health and the environment.

I would also note a new subsection which provides a right for intervention in actions to any person who has a direct interest in the action and who is so situated that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest.

This provision creates a statutory right for citizens to intervene. It is designed primarily to protect the interest of those who own property in proximity to a Superfund site and is similar to statutory intervention provisions contained in other Federal statutes, including RCRA, the Toxic Substance Control Act, the Clean Air Act and the Safe Water Drinking Act.

Without this provision, citizens are relegated to the permissive intervention provisions of rule 24 of the Federal Rules of Civil Procedure, under which they must spend a substantial portion of their resources in pretrial proceedings to establish that no other party to the litigation adequately represents their interests. By shifting to EPA or to the State the burden of establishing that it adequately represents the citizen's interest, the statutory right of intervention will permit citizens to spend the major portion of their resources addressing the substance of their claims.

This provision is consistent with numerous other Federal statutes, and it was adopted without controversy in the Judiciary Committee. I urge the adoption of H.R. 2817.

Mr. KINDNESS. Mr. Chairman, I yield such time as she may consume to the gentlewoman from New Jersey [Mrs. ROUKEMA].

(Mrs. ROUKEMA asked and was given permission to revise and extend her remarks.)

Mrs. ROUKEMA. Mr. Chairman, I rise in support of this bill. It has been a long and arduous process of compromise, but the bill is essential to the future of our Nation, to its health and to its economy, and I urge support for the bill.

Mr. KINDNESS. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan [Mr. DAVIS].

(Mr. DAVIS asked and was given permission to revise and extend his remarks.)

Mr. DAVIS. Mr. Chairman, I wonder if I could engage the chairman of the full committee, the gentleman from Michigan [Mr. DINGELL] for a moment, please.

Mr. DINGELL. Yes.

Mr. DAVIS. I would like to have a colloquy with the chairman of the committee.

Mr. Chairman, there is a national priority list site in my congressional district which is receiving EPA Superfund cleanup money. The EPA has sent a copy of the record of decision for the Charlevoix site to the Michigan Department of Natural Resources, recommending that a limited action alternative be implemented consisting of long-term surface water and ground water monitoring. Under this recommended alternative, the contaminated ground water would continue to flow into Lake Michigan under natural flow conditions and no cleanup of the contaminated ground water would be attempted. The Michigan Department of Natural Resources has expressed their concern for the EPA's inaction at this site with respect to a final remedial action. Governor Blanchard has written to the EPA asking that the EPA reevaluate the feasibility study and to amend the record of decision for the Charlevoix site.

Mr. Chairman, I would like to make it clear that it is the intent of Congress, in providing a major nationwide program through Superfund, that the sites be clean up. I am concerned that the EPA has avoided a final solution to the Charlevoix problem. We would like to see the EPA reevaluate their earlier recommendation and attempt to find an equitable solution to the problem.

Thank you Mr. Chairman, for this opportunity to bring this critical matter to the attention of our colleagues and to clarify the position of Congress with respect to Superfund cleanup actions.

Mr. DINGELL. Mr. Chairman, will my good friend the gentleman from Michigan, yield?

Mr. DAVIS. Yes; I yield to the chairman.

Mr. DINGELL. Mr. Chairman, I thank my good friend.

I first want to agree with my good friend and colleague from Michigan that instances such as the one the gentleman has described pose a threat to the health and water quality of the Great Lakes.

Second of all, I observe that I am aware of the situation to which the gentleman alludes and that our Governor, Governor Blanchard, has been extremely interested in this matter.

The reason we are here today, I would observe to my good friend, if he would continue to yield to me, engaged in legislation to reauthorize this important Superfund law, is to ensure that the Superfund cleanup of critical toxic waste sites proceeds in accordance with the law in the most speedy and expeditious fashion.

I will observe to my good friend, if he will continue to yield to me, that I am confident that passage of this legislation will send a clear signal to the EPA that it should be diligent in its responsibility to see to it that sites such as Charlevoix will not be overlooked and that the necessary actions are to be taken there and elsewhere to abate threats to public health.

Mr. DAVIS. Mr. Chairman, I thank the chairman of the full committee for those comments, I say to my colleague, the gentleman from Michigan, who has always been most helpful. I think this will help in this particular situation.

Mr. CONTE. Mr. Chairman, will the gentleman yield to me?

Mr. DAVIS. Yes; I yield.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DAVIS] has expired.

Mr. KINDNESS. Mr. Chairman, I yield 1 additional minute to the gentleman from Michigan.

Mr. CONTE. Mr. Chairman, if the gentleman will yield, I would like to ask the gentleman from Michigan, the town of Whately in my district has a large number of private wells and the ground water which feeds those wells is found to be contaminated with pesticides, primarily EDB and temik.

I also understand the issue of ground water contamination is a major one facing the country.

The gentleman from Hawaii [Mr. HEFTEL] has been studying this problem in his own State.

Is it the understanding of the gentleman from Michigan [Mr. DINGELL] that the substitute preserves the ability of the Superfund to pay for cleanup of ground water contaminated with pesticides?

□ 1450

Mr. DINGELL. Mr. Chairman, if the gentleman will yield, the purpose of the legislation here is to clean up all sites which constitute a threat to the health and the environment which happen to fall on the list published by the Environmental Protection Agency.

The purpose is to address not only sites which contribute one kind of pollutant, but other kinds. That would include, obviously, pesticides and things of that kind.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DAVIS] has again expired.

Mr. DINGELL. Mr. Chairman, I yield 1 additional minute to the gentleman from Michigan [Mr. DAVIS].

Mr. DAVIS. Mr. Chairman, I yield further to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. I would observe, Mr. Chairman, that with a potential of 10,000 to 20,000 suits and $100 billion, cleanup is not going to proceed as fast as we want, but we are going to try to see to it that it is done, and that is the purpose of the legislation.

Mr. CONTE. I thank the gentleman from Michigan.

Mr. GLICKMAN. Mr. Chairman, I yield 2 minutes to the gentleman from West Virginia [Mr. STAGGERS].

(Mr. STAGGERS asked and was given permission to revise and extend his remarks.)

Mr. STAGGERS. I thank the gentleman for yielding this time to me.

Mr. Chairman, I join with those urging passage of this very critical bill, and I would like to compliment my chairman and the staff. It has been a pleasure working with them and I appreciate the hard work they put into it.

But I would also like to compliment, from the other side of the aisle, the gentleman from Colorado [Mr. BROWN] for the efforts that he took to reach a compromise, above and beyond what most of us would go through to reach a compromise.

The Committee on the Judiciary passed a very good citizens' suit provision for Superfund. Such a provision will ensure that private citizens have an opportunity to sue companies for abatement from imminent and substantial endangerment from hazardous waste sites. I would repeat that: Imminent and substantial endangerments.

Citizen suits will provide this legislation with an important enforcement tool. I would add that all other environmental laws have this provision in them. I believe that the Superfund bill must contain this provision. If citizens can demonstrate that a site possesses an imminent and substantial risk to their health, they should be given an opportunity to force a cleanup. This provision is critical to ensure the future health of the Nation.

Mr. KINDNESS. Mr. Chairman, I have one additional speaker who has not arrived on the floor yet. If the gentleman from Kansas has other speakers, would he consider yielding to them at this time?

Mr. GLICKMAN. Mr. Chairman, how much time do I have remaining?

The CHAIRMAN. The gentleman from Kansas [Mr. GLICKMAN] has 4½ minutes remaining. The gentleman from West Virginia only used 1 minute.

Mr. GLICKMAN. Mr. Chairman, I yield myself such time as I may consume.

I would just make a few comments in conclusion of my time. What the Committee on the Judiciary tried to do in this bill, and I think what the other committees tried to do in this bill is to achieve balance, to try to pursue cleanup without being ridiculously impractical or onerous in the process.

That is the whole idea of why this Superfund bill, I think, makes a lot of sense. To give some examples of how we on the Committee on the Judiciary tried to achieve that balance, one thing we did was have respect for what we call de minimis generators. These are people who generate very, very small quantities of waste both in terms of quality and quantity. There ought to be a way of getting these people out of very, very expensive cleanup situations or serious litigation. A lot of these are very small business people and we have focused in on them.

We also pursued sections to encourage settlements so that there would not have to be an unnecessary amount of litigation. We give greater access for judicial review for the selection of the cleanup remedy, so that both business and citizens would be able to go into court if they felt that the cleanup remedy did not comply with the sections of the law.

The fourth thing that we did was to provide citizen suits for equitable relief—not damages, equitable relief—in the event of substantial and complete endangerment to their health or safety.

So these things, I think, reflect the fact that in pursuing the remedies involved in Superfund, we have to be strong, but we have to be reasonable, and that is what we tried to do on our aspect of this committee consideration.

Mr. Chairman, I yield back the balance of my time.

Mr. KINDNESS. Mr. Chairman, how much time do I have remaining?

The CHAIRMAN. The gentleman from Ohio [Mr. KINDNESS] has 3½ minutes remaining.

(Mr. KINDNESS asked and was given permission to revise and extend his remarks.)

Mr. KINDNESS. Mr. Chairman, I yield 3 minutes to the gentleman from Colorado [Mr. BROWN].

Mr. BROWN of Colorado. I thank the gentleman from Ohio for yielding this time to me.

Mr. Chairman. I feel it important to once again bring forth the concerns surrounding the concept of possessory liability. The compromise substitute does not make some progress in the related area of de minimis generator releases but does not adequately address the fact that a small business is still potentially liable for all the cleanup costs at a disposal site, even though it has done everything legally and technologically possible to dispose of its waste properly. The resulting potential liability can run into the hundreds of millions of dollars and is virtually uninsurable. Attorney's fees alone can bankrupt a small business trying to defend itself against this liability.

It should be possible for a small business that generates small quantities of waste of low toxicity, if it follows all EPA rules and deposits its waste at an EPA-approved facility, to be relieved of further liability. This problem can be solved as state-of-the-art disposal facilities, approved and monitored by the Environmental Protection Agency, become available. I was disappointed that language relieving small generators who use these facilities of further liability could not be added to the substitute.

An amendment which addresses these problems would not only encourage accelerated compliance with the new standards put forth under the 1984 RCRA amendments, but also provide much needed relief for the thousands of small businesses who face ruinous liability and litigation costs because of their totally legal disposal of hazardous waste. These small businesses are not "midnight dumpers". Rather, they are honest, law-abiding businesses that simply want to dispose of the wastes associated with their day-to-day operations. Such businesses include gasoline stations, dry cleaners, hospitals, car washes, colleges and universities.

EPA estimates that there are 175,000 small quantity generators. According to an EPA study, all these small generators combined produce about three-tenths of 1 percent of all the hazardous waste generated. The grocery stores, body shops, paint stores, car washes, colleges and universities are not the source of our environmental problems and will be less so if they can be encouraged to use safe, modern disposal sites. The EPA would be able to focus its enforcement activities against major polluters, who are responsible for over 99 percent of the hazardous waste.

Furthermore, this immeasurable and unending liability presents immediate practical problems for small business. Financial institutions are extremely wary of lending capital for operations when the borrower may or may not be subject to huge liabilities created by the legal disposal of hazardous waste. The impact of this ripples through the economy as small business finds itself unable to borrow needed capital for expansion and investment due to the contingent liabilities generated under the CERCLA liability system.

No system of liability should be such that it actively discourages economic growth and job creation.

Most small generators lack the money and expertise to institute onsite disposal methods. They are forced, essentially, to transport their wastes off site regardless of the status of liability. The imposition of retroactive, strict, joint and several liability for small businesses who have placed their wastes in RCRA permitted facilities, ironically creates a strong inducement to improper behavior. Any small business that deposits its waste at a facility requiring waste to be manifested is documenting its own liability. It is, in effect, creating evidence that can be used against it in the future. This creates a powerful disincentive for disposing of waste in EPA-approved facilities. Allowing small generators a defense against liability would remove this disincentive and encourage environmentally sound disposal. In addition, it would provide further incentive for owners and operators of disposal facilities to upgrade their sites to obtain final permits under RCRA. In this way, environmental laws can be made both more fair and more effective.

I thank you, Mr. Chairman, for the opportunity to share my views with the committee and hope you will allow amendments in both the citizen suit and possessory liability sections of the bill.

The CHAIRMAN. The gentleman from Colorado [Mr. BROWN] utilized 2 of the 3 minutes and yields back 1 minute. The gentleman from Ohio [Mr. KINDNESS] has 1½ minutes remaining.

Mr. KINDNESS. Mr. Chairman, I yield my remaining time to the gentlewoman from Nebraska [Mr. SMITH].

Mrs. SMITH of Nebraska. I thank the gentleman for yielding this time to me.

Mr. Chairman, there is no doubt in my mind that the Superfund Program can be improved. The Supefund record has been something less than spectacular, ranging from sweetheart deals to mass resignations by EPA officials to jail sentences.

At the conclusion of the program's 5-year authorization, and after Hurricane Gloria washed millions of gallons of chemicals from a cleaned Superfund site into Pennsylvania's Susquehanna River, EPA admitted that it had not cleaned up any of the sites on the National Priority List. If Congress can't improve on that record, we're all in trouble.

I have just recently had my first opportunity to see the Superfund program in action. EPA has begun work on the first NPL site in Nebraska that requires a remedial solution. At this site, EPA has drawn a line around a contaminated water well and has called it a Superfund site needing millions of dollars' worth of studies.

Never mind the fact that the well is not being used and EPA's data shows that the contamination is decreasing. Never mind that—according to EPA—if water from the well were being used, drinking the water would be less harmful than smoking a cigarette.

Mr. Chairman, my constituents think that EPA is determined to steamroll their expensive studies right through the town.

Only at my insistence has EPA been forthcoming with information about its plans for study and cleanup of this site. Because the city was unaware of the public comment period on the site, I have been somewhat successful in obtaining EPA's promise to consider the late comments submitted by the city.

For these reasons, I especially favor the provisions of this bill that require EPA to provide greater opportunity for public comment and participation in the development of its cleanup plans.

And while I recognize the need for a strong national policy on toxic waste cleanup, it is my hope that this reauthorization will result in a more flexible program that will be responsive to the unique needs of each state and each Superfund site.

Mr. Chairman, the number of abandoned waste sites necessitates an expanded Superfund Program. We're all in agreement about that.

This bill certainly has its positive and negative points. But I am hopeful that whatever version of the Superfund is finally passed by this Congress will result in a more effective, efficient, and economical Superfund.

□ 1500

Mr. GLICKMAN. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. Brooks].

Mr. BROOKS. Mr. Chairman, this bill establishes a negligence standard for the work done by response action contractors in cleaning up Superfund sites. What is the negligence standard?

Mr. GLICKMAN. If the gentleman will yield, the negligence standard is th existing, normal standard used to judge the adequacy of work done by professionals, such as doctors, lawyers or engineers. The negligence standard measures the adequacy of the professional's work by comparing it to standards of practice used by other reasonable and competent professionals doing the same kind of work at the same time. The negligence standard is the standard covered by professional liability insurance policies (errors and omissions or malpractice policies).

Mr. BROOKS. Does the negligence standard allow response action contractors to use outmoded technologies or solutions just because they were once considered satisfactory?

Mr. GLICKMAN. No, the negligence standard judges the actions of a professional as of the time the services are performed. If an action is outdated and no longer generally recognized as appropriate at the time it is taken, the response action contractor can be held liable for damages caused by the inappropriate conduct.

A surgeon is not held liable for failing to use technologies or techniques not in existence or not generally recognized as appropriate when an operation is performed. Neither should response action contractors be for Superfund work.

The CHAIRMAN. All time has expired for the Committee on the Judiciary.

The Chair will now recognize the Committee on Merchant Marine and Fisheries. The gentleman from North Carolina [Mr. Jones] will be recognized for 15 minutes and the gentleman from New York [Mr. Lent] will be recognized for 15 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. Jones].

Mr. JONES of North Carolina. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I thank you for the opportunity to speak on behalf of H.R. 2817, a bill to reauthorize the Superfund Program. I realize that many words have and will be said today about the importance of the Superfund Program, and I will, therefore, be brief.

Mr. Chairman, I rise today in strong support for H.R. 2817. As my colleagues know, the Merchant Marine Committee received a sequential referral of H.R. 2817 to examine three areas within the committee's jurisdiction: First, the Superfund responsibilities of the U.S. Coast Guard, which shares cleanup responsibilities with EPA; second, the natural resource areas of the Superfund program, in which the Federal and State Governments are designated as trustees of our natural resources; and third, the components of the Superfund Program relating to the marine environment, including spills of hazardous substances into marine and coastal waters.

As evidence of our strong support of this legislation, our committee reported H.R. 2817 with a nearly unanimous vote with several amendments relating to these three areas. In preparing for floor action on H.R. 2817 by the full House, our committee has worked closely with the other four legislative committees of jurisdiction in developing the substitute compromise text which, I am pleased to report, contains the majority of amendments reported by the Merchant Marine Committee. I want to express my appreciation for the cooperation of the other committees in this effort, and pledge the efforts of the Merchant Marine Committee in support of H.R. 2817.

I would like to draw your attention to one amendment reported by the

Merchant Marine Committee which has been incorporated as a new title in the substitute—The Comprehensive Oil Pollution Liability and Compensation Act. This oil spill title is essentially the same as the amendment added by the House to the Superfund bill in the last Congress. Our committee has devoted considerable time over the years to the development of this legislation, which has the support of the administration, industry groups, and environmentalists. We have together with The Public Works Committee and the Ways and Means Committee have reached a compromise in principle on the oilspill components of H.R. 2817. I urge my colleagues to support this important addition to the legislation.

The CHAIRMAN pro tempore (Mr. McCURDY). The gentleman from North Carolina [Mr. JONES] has consumed 3 minutes.

Mr. LENT. Mr. Chairman, I yield myself such time as I may consume.

(Mr. LENT asked and was given permission to revise and extend his remarks.)

Mr. LENT. Mr. Chairman, I rise to commend all of the committees of the House of Representatives which have worked so long and so hard on the Superfund reauthorization. I especially want to commend my colleagues on the Committee on Merchant Marine and Fisheries, particularly the distinguished chairman of that committee, the gentleman from North Carolina [Mr. JONES], and the gentleman from New York [Mr. BIAGGI], as well as the gentleman from Massachusetts [Mr. STUDDS], and also the committee staff for their diligent and thoughtful efforts in ensuring that the bill before us properly addresses several matters involving marine pollution in the marine environment, authority of the U.S. Coast Guard to respond to Superfund incidents, and vital coordination between EPA and Federal natural resources trustee agencies in responding to Superfund incidents and assuring that sufficient information regarding damage to natural resources will be available to allow prosecution of claims against responsible parties. I am pleased to say that all interested committees have agreed to these provisions as they appear in the bill before us today.

This bill contains other provisions which I and many of my colleagues have, for many years now, strongly supported and cosponsored in legislation—a comprehensive system of liability and compensation for oilspill damage and cleanup costs. There is virtually no dispute over the fact that we need a comprehensive system to replace the several separate Federal oilspill statutes that presently exist. This oilspill provision is fully consistent with the overall environmental and liability objectives of Superfund.

The oilspill provisions would bring certainty and uniformity, in contrast to the hodgepodge of State and Federal laws in existence today that govern oilspills. The oilspill provisions consolidate several existing Federal oilspill liability and compensation funds, and greatly enhance the likelihood that innocent victims of an oilspill will be properly compensated.

This language represents a delicate but fair balance among all affected interests. I believe that the administration, the oil industry, shipowners, environmentalists, the insurance industry, potential claimants, and the States should recognize this. I urge all of these interests to assist us to make sure that this comprehensive system of liability and compensation for oilspill damage—a goal we have been seeking for nearly a decade—is promptly enacted into law.

Mr. Chairman, Superfund was reported by the Merchant Marine and Fisheries Committee with overwhelming support—by a vote of 38 to 1. I urge my colleagues here on the floor of the House to support reauthorization of Superfund.

Mr. JONES of North Carolina. Mr. Chairman, I yield 5 minutes to the gentleman from Massachusetts [Mr. STUDDS].

(Mr. STUDDS asked and was given permission to revise and extend his remarks.)

Mr. STUDDS. Mr. Chairman, as one of the members of the Committee on Merchant Marine and Fisheries who argued that my committee should have the right to a sequential referral on this legislation, and—far more importantly—as one who represents a congressional district that has had four hazardous waste sites placed on the national priority list—I rise in strong support of the bill.

In so doing, I recognize, as I believe we all do, that this bill is not perfect. A perfect hazardous waste cleanup program, after all, would guarantee rapid and complete removal of toxic substances through the use of technology that is both environmentally acceptable and economically feasible. A perfect system would be financed entirely by persons and companies clearly responsible and deservedly liable for the pollution.

Current law, as we all know, does not provide for a perfect hazardous waste cleanup program; and neither will the bill before us today. But if this legislation is approved, we will have a program that should provide cleanup that is more rapid, more thorough, and more equitable by far than the miserable record developed over the past 5 years.

I think even the most vigorous supporters of the Reagan Presidency will concede that valuable time was squandered, especially in 1981 and 1982, in the battle against hazardous waste. We had leadership at EPA that refused to acknowledge the very existence of the problem, and whose efforts were aimed not at making the Superfund Program work, but instead at making the Superfund Program go away. I think that situation has changed, but the legacy of the period persists—in public impatience, and in skepticism about the willingness of the government to commit either the effort or the resources that this problem so urgently and obviously requires.

That skepticism has grown stronger with each passing month, as congressional consideration of this legislation has dragged on and on. More than a year ago, the House approved a bill by an overwhelming margin that would have accomplished all that we are seeking to achieve in this bill, and more. But the Senate failed to act. As a result, we are here once again, in December, during the waning days of a session of Congress, arguing about a bill that ought to be too important to consider during a period as hectic and hurried as this, but which is also too urgent to further delay.

From a personal perspective, I am very pleased that the bill before us includes more than a dozen of the amendments that I offered to the bill during its consideration by the Committee on Merchant Marine and Fisheries.

The most important of these would—

First, establish a prompt and equitable means of compensating those suffering economic loss as a result of an oil spill;

Second, require the Environmental Protection Agency to take into account the importance of cleaning up hazardous waste sites to the extent that affected fish and shellfish resources are able to meet Federal public health standards governing their commercial sale; and

Third, make certain that funds recovered by the Government in a claim for damage to natural resources will be used to repair that damage, and not for some other purpose. This is particularly important with respect to a situation existing in my district, in New Bedford Harbor, where a Government suit for damage to natural resources is now pending. Under current law, the Government would win that case, and then use the recovered funds for whatever purpose the barely discernible heart of the Office of Management and Budget might desire, ranging from star wars to subsidies for sugar beets. I believe—and my amendment will require—that this money be used, and only be used, to repair or restore the natural resources that have been damaged as a result of contamination from hazardous waste.

Other amendments that I developed will preserve the role of the Coast Guard in responding to spills of hazardous waste from vessels. Among these is a provision that will guarantee the ability of the Coast Guard to require any person responsible for such a spill to clean it up in a prompt and effective manner, consistent with the national contingency plan.

These amendments, and others offered by our committee regarding damage to natural resources and liability for damages caused by spills from ocean incineration vessels, reflect the unique and valuable perspective brought to this issue by the Committee on Merchant Marine and Fisheries. I believe our committee was correct to seek jurisdiction over this legislation; I believe we have improved it; and I hope we will play a substantial role in guaranteeing its successful implementation by the Coast Guard, NOAA, EPA, and other Federal agencies who have been assigned responsibilities under this law.

The overall merits of the compromise legislation that we are considering today are obvious, I believe, particularly when you compare the provisions on this bill with those in existing law. Of greatest importance are those that—

Expand the size of the Superfund from $1.6 billion to more than $10 billion;

Provide a specific timetable for EPA to investigate and clean up hazardous waste sites;

Establish strict standards for cleaning up waste sites;

Establish a program for encouraging the most rapid possible development of new technology to clean up, process, and transport hazardous materials;

Create a separate fund to be available to clean up contamination from abandoned underground petroleum storage tanks, when an owner or operator is unwilling or unable to do so. This provision is a crucial element of any plan to deal with the threat to human health posed by pollution problems, and it has been particularly important for southeastern Massachusetts.

Another important feature of this legislation is that it seeks to deal with the question of liability for cleaning up hazardous waste sites, but without weakening the standard of liability in existing law. Instead, the bill seeks to encourage the negotiation of cleanup settlements between EPA and private parties that will protect the public interest, while also providing fair treatment to those required by law to bear all or part of the financial cost.

The question of liability is not merely a theoretical problem. It is very important, very real, and very difficult. In my own district, the question of liability for the pollution that exists in New Bedford Harbor has not yet been resolved. Nor is it clear that procedures exist within current law that will guarantee the question will ever be settled in an equitable manner.

This is because there is no clear connection within the law between proportional responsibility for pollution and proportional liability for the costs of cleaning up that pollution. Nor is there clear guidance with respect to the assignment of liability to companies that purchased facilities from which pollution once emanated, but which have been responsible for little or no pollution under the current management.

The evidence indicates, in the New Bedford case, that the vast majority of the discharges of PCB's occurred during the 1950's and 1960's, when one of the major dischargers, Aerovox, was under different management than it is today. The company that operated Aerovox until 1972 has been renamed AVX, and no longer operates anywhere in the New Bedford area.

Under the law, all companies owning the Aerovox facilities since the time of the discharges are potentially liable for all of the cleanup costs and damages caused by that pollution. Thus, the present owners—and employees—face the possibility of economic hardship, or even potential bankruptcy, as a result of discharges that occurred for the most part 15 to 30 years ago under different management. This is true despite the fact that fairness would seem to dictate that the old company—AVX—should bear the major share of responsibility for the pollution cleanup costs.

In the New Bedford case, as in many other cases around the country, there is a very strong public interest in reaching a settlement of the liability question. This is true because both EPA and private resources ought to be devoted to cleaning up hazardous waste sites, not arguing about them in court. According to some estimates, the costs of ligitation resulting from the existing Superfund law are equal to one-third of all the money that has been spent both by the Government and by private parties to clean up hazardous wastes since the bill was enacted 5 years ago. Any law that primarily benefits lawyers is far more often than not a bad law. Unfortunately, as long as large sums of money are involved, and as long as the legal issues are both cloudy and complicated, this situation will continue.

Prolonged controversy over liability questions also serves, in many cases, to delay the selection and implementation of an effective option for cleaning up hazardous waste sites. This is because potentially liable parties have a strong interest in discouraging the Government from selecting a relatively ambitious cleanup option even if the Government intends to use money from the Superfund to carry out the initial cleanup. The potentially liable party is well aware, after all, that the Government will seek to recover its costs in full.

A goal of the law, therefore, must be to create incentives for all those involved in the process—the Federal Government, State government, the victims of pollution, and those who may be liable for the costs of cleanup—to work together to select an effective and long-lasting cleanup option. The new proposed bill includes a section aimed at achieving this goal by permitting the Government to settle questions of liability with those individuals and companies who demonstrate a willingness to pay an equitable portion of the cleanup costs.

The new amendments will not eliminate completely the inequities that exist within the current statute as they affect the situation in New Bedford. I am hopeful, however, that they will encourage a process of negotiations under which each of the potentially liable companies will be able to settle with EPA, and pay a share of the cleanup costs that is at least roughly proportional to their individual responsibility for the discharges that have contaminated the harbor.

In closing, I want simply to restate my belief that this is a vitally important, albeit imperfect, piece of legislation. I reserve the right to support amendments aimed at improving it further. But I also believe that those involved in bringing us to this point deserve an immense amount of credit for the work that has been done. I hope the House will act promptly and favorably on the bill, that negotiations for a final text will commence as rapidly as possible with the Senate, and that the Superfund amendments will be law by early next year.

Mr. LENT. Mr. Chairman, I have a number of requests from members of the Committee on Energy and Commerce who were unable to be here earlier.

I yield 3 minutes to the gentleman from Colorado [Mr. SCHAEFER], a new member of the Committee on Energy and Commerce.

(Mr. SCHAEFER asked and was given permission to revise and extend his remarks.)

Mr. SCHAEFER. Mr. Chairman, certainly I do want to offer my gratitude to the gentleman from New York for giving me time to talk briefly here, being a member of the Committee on Energy and Commerce. I would have to reflect a lot on what a lot of other Members have said, of course, pertaining to the hard work that has been put on this particular piece of legislation, not only by members of the Merchant Marine and Fisheries Committee, but all of the committees, including our own chairman, the gentleman from Michigan [Mr. DINGELL], the gentleman from North Carolina [Mr. BROYHILL], the gentleman from New York [Mr. LENT], and particularly the gentleman from Ohio [Mr. ECKART]. I also would have to say that I have to give a lot of credit to the gentleman from New Jersey [Mr. FLORIO], who indeed has looked upon this as a key piece of legislation in this whole Congress.

The Superfund bill of 1985 provides a fair and equitable balance between the environmental and economic concerns that have been considered during reauthorization of the entire Superfund.

Like most major measures of this magnitude, there was a certain amount of give and take that was necessary to pull together the wide range of concerns. Although there are a number of provisions in the bill that I would rather see altered, this measure [illegible] many important provisions that I [illegible] support and I do support. And more importantly, it is a bill that can get through the entire House, and I hope through the entire Senate, and I hope to become law.

Mr. Chairman, a few years ago, it was a rare individual who could tell you what the word Superfund really meant. Today it can be defined by a large segment of our population. What indeed has happened to turn this all around in the last few years?

□ 1515

Basically, it is because the general public and Congress have concluded that there are hazardous waste sites in our country that have to be cleaned up, by the Government if need be, in order to protect the public health and the environment of this country.

That is what was responsible for the original Superfund bill becoming law just a few years after the issue was originally raised. It will also be responsible, I am certain, for the reauthorization of new Superfund legislation.

Mr. Chairman, I think that one of the most important parts is the effort made to try and reduce the litigation necessary, and I feel that this bill will indeed do that; and what we have to have is a law that will work and not one that ends in litigation and does indeed get the job done.

Mr. JONES of North Carolina. Mr. Chairman, I yield such time as he may consume to the gentleman from New

York [Mr. BIAGGI].

(Mr. BIAGGI asked and was given permission to revise and extend his remarks.)

Mr. BIAGGI. Mr. Chairman, I rise in support of title IV cited as the Comprehensive Oil Pollution Liability and Compensation Act. The Committee on Merchant Marine and Fisheries has for more than 10 years been directly involved in the development of legislation to provide a comprehensive, equitable, and effective means of establishing liability and providing compensation for cleanup costs and injuries resulting from oil spills. As a matter of fact, the committee has been involved with oil pollution liability and compensation issues since prior to the catastrophic grounding and breakup of the crude oil tanker *Torrey Canyon* off the coast of Great Britain in 1967.

I have been personally involved with these issues since I was first elected to Congress in 1969. During the 95th Congress—as chairman of the Subcommittee on Coast Guard and Navigation, I was able to see to the passage of the first oil pollution liability and compensation legislation by the House by a recorded vote of 332 to 59.

I do not want to belabor you with the details of what occurred during the following sessions of Congress. However, I remind you that we have worked very hard for many years to develop legislation to provide a comprehensive, equitable, and effective means of establishing liability and for providing compensation for cleanup costs and injuries resulting from oil spills. With continuing vigor the House was successful in passing similar legislation a number of times. This legislation failed to be enacted primarily due to problems associated with hazardous substances liability and compensation and hazardous waste dump sites and not those associated with oil.

For many years, this type of legislation has had strong administration support. About 4 years ago, however, the administration reversed its position and opposed the legislation due to, I believe, a misunderstanding of the effects of funding and operation of the oil pollution fund. Fortunately, the administration reversed its position in 1984 and is again in strong support of this legislation.

The administration continues to be concerned with the oil pollution threat and has been active in attempting to improve international oil pollution liability and compensation schemes. In 1984, this concern culminated in a diplomatic conference that amended existing treaties so as to be more compatible with U.S. interests. This will be a significant contribution to arriving at solutions that are internationally as well as domestically acceptable.

Public concern over the need for this type of legislation was generated when the tank vessel *Torrey Canyon* grounded off the southwest coast of England in 1967, spilling approximately 100,000 tons of crude oil that fouled the shores of the British Isles and the coast of France. Public concern was again highlighted in 1969 when a production platform off Santa Barbara, CA, suffered a blowout that discharged untold amounts of oil before it could be brought under control.

Since then, numerous other casualties have highlighted the oil pollution problem and the need for a national comprehensive oil spill liability and compensation scheme. A most noteworthy one was the grounding of the tank vessel *Argo Merchant* of Nantucket in 1976. The grounding of the very large crude carrier *Amoco Cadiz* off the coast of France on March 16, 1978, is a more memorable reminder of the need to establish such a scheme.

Another significant casualty that affected our coastal environment and economic well-being was the blowout of Ixtoc I in the Bay of Campeche, Mexico, on June 3, 1979. The impact of this spill and the resulting oil pollution of the Texas coastal environment and the waters of the Gulf of Mexico was extensive. The litigation arising out of this incident has been extensive and protracted. Had this legislation been in place, the alternative would have been fair, adequate, and prompt compensation to those who were victimized.

Casualties continue to occur and it continues to be necessary to provide for adequate compensation to those who suffer damage from the effects of oil pollution incidents. While existing oil pollution legislation permits compensation for cleanup and removal costs, there is no legislation that adequately and timely compensates those who have been victimized.

Prevention of oilspills is still the most effective means of protecting our coastal and estuarine environment from damage. The Port and Tanker Safety Act of 1978—which I was privileged to sponnsor and pursue during the 95th Congress—has been effective in this area. However, we cannot preclude the possibility of oilspills occurring due to mechanical failures and the carelessness of individuals.

In the United States, the public's concern has led to enactment of a number of measures to improve the quality of our waters and to control pollution. The Water Quality Improvement Act of 1970—which was subsequently amended by the Federal Water Pollution Control Act Amendments of 1972—and later amended by the Clean Water Act of 1977—declared, as a national policy, that there should be no discharges of oil into or upon our waters. In addition to numerous specific measures for the protection of the marine environment, these statutes established liability on the part of spillers for the cost of cleanup. These acts, however, do not address themselves to the question of damages other than for the cost of cleanup.

The concepts of this legislation have had broad support from the users of oil, from the oil industry itself, from the insurance industry—which does the underwriting—and from many environmental groups. The bill:

Establishes strict liability for the owners and operators of the source of oil discharges;

Provides for a simple and practical system for the compensation of a broad range of oil discharges;

Imposes reasonable and insurable limits of liability on the owner or operator of the vessel, thereby insuring frontline responsibility for responding to an oil pollution incident;

Creates a backup compensation fund to respond to damage claims that are not satisfied;

Guarantees that those who have been harmed by oil pollution will be quickly and fairly compensated for their economic loss;

Encourages prompt and complete cleanup of oil spills;

Provides for the establishment of an oil pollution fund supported by a tax on crude oil and petroleum products;

Provides for superseding duplicative funds and procedures that now exist in various Federal and State statutes; and

Provides a simple and workable claims settlement procedure.

The objective of this oil spill liability and compensation legislation is to:

Establish one fund at the Federal level that will provide ample money for prompt compensation for oil spill damage;

Establish one set of oil spill liability laws for the entire Nation, covering all types of oil spills from all sources;

Remove the overlaps and bare spots of the present patchwork system; and

Minimize the bureaucracy.

I reiterate my prior conviction that this legislation is practicable in application—and fully considers the needs of those who are victimized by oil pollution. I firmly believe that we must act now in the public interest to provide comprehensive oil pollution liability and compensation legislation. I therefore, urge all Members to support this important legislation.

I would be remiss, Mr. Chairman, if I did not take this opportunity to commend the gentleman from Massachusetts [Mr. STUDDS], the chairman of the full committee, the gentleman from North Carolina [Mr. JONES], and the ranking minority member, the gentleman from New York [Mr. LENT], for their consistent and indefatigable efforts in this regard.

Mr. LENT. Mr. Chairman, I yield 4 minutes to the gentleman from New York [Mr. ECKERT].

Mr. ECKERT of New York. Mr. Chairman, H.R. 2817 sets up a responsible and effective program for cleaning up hazardous waste. I support the bipartisan compromise bill worked out between the Energy and Commerce Committee and the Public Works Committee and urge my colleagues to join in supporting this critical environmental legislation.

Superfund is very important to the people in my district and throughout western New York.

There is currently one national priorities list site in my district and another is under review. An adjoining congressional district has the famous Love Canal site.

Superfund is also very important to the people in my district who are employed by numerous chemical producing and using businesses. I want to ensure that none of the approximately 60,000 persons employed by Eastman Kodak, Du Pont, Olin Corp., Jones Chemical, Dow Chemical, or the hundreds of other persons employed by chemical using or producing businesses in my district, are thrown out of work as a result of being taxed out of business, regulated to the point of losing their competitive edge, having their important trade secrets opened up to their foreign or domestic competitors or unfairly subjected to endless lawsuits that would surely follow from a Federal cause of action.

We need a clean environment. I am committed to a clear environment and reauthorization of Superfund. I am also committed to protecting the jobs of the thousands of people working in the Greater Rochester area in these important industries which have helped to create a quality of life which a recently prepared study for the U.S. Environmental Protection Agency ranked Rochester third in the Nation, the only community east of the Mississippi River so acclaimed, for outstanding quality of life in economic, political; environmental, health, education, and social components of urban living.

This bill is a bipartisan effort that strikes a balance betweem the need to continue full economic growth and employment and the need to keep the environment in as clean a State as possible. I have some reservations about the bill, including the provision that calls for a spending level of $10 billion—a sum which exceeds what the EPA says it can effectively spend. On the positive side, I find that the bill moves away from confrontation and the courtroom and toward cleanup of sites around the country.

The bill is a positive improvement on current law for a number of reasons.

First, the bill establishes a schedule which requires EPA to start cleanup studies at a rate of 150 in the first year, 175 in the second year, and 200 each year thereafter. H.R. 2817 also establishes a reasonable and achievable annual schedule for the start of cleanups, 125 starts in fiscal year 1987, 140 in fiscal year 1988, 160 in fiscal year 1989 and 175 in fiscal year 1990.

Second, the bill establishes reasonable cleanup standards at national priority list sites which provide guidance for the EPA in carrying out its duties.

Third, the bill insures the protection of the community by establishing a workable community right to know plan that will provide those involved in responding to emergency situations the information necessary to carry out their responsibilities.

Fourth, the bill emphasizes the cleanup of sites over endless legal maneuvering and judicial gridlock, while still providing citizens the right to sue to compel cleanup of hazardous waste facilities where such facility may present an imminent and substantial endangerment to health or the environment.

Fifth, the bill provides for adequate contractor cleanup by reducing the exposure to liability except in those cases where contractors have acted negligently, grossly negligent, or purposely in vioiation of Superfund. This should help move us along with cleanup and help ease some of the excessive pressures businesses are facing in the area of environmental liability insurance.

The bottom line is a bill that is a bipartisan consensus that reflects the give and take of the legislative process, a bill that moves the cleanup of hazardous waste forward without costing thousands of workers their jobs.

I urge my colleagues to support this important compromise, this very positive contribution to a better environment.

Mr. JONES of North Carolina. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. LENT. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from New Jersey [Mr. RINALDO].

Mr. RINALDO. Mr. Chairman, I rise in support of H.R. 2817 and urge my colleagues to join me in enacting this program so that we can begin the important work of cleaning up our Nation's most dangerous hazardous waste sites.

The Superfund law enacted in 1980 called for a fund of $1.6 billion to pay for the cleanup of abandoned hazardous waste sites around the country. But we know far more about the problem today than we did then. According to estimates furnished by the Office of Technology Assessment, there may be as many as 10,000 such sites around the country; cleaning them up could cost as much as $100 billion.

Clearly, the dimensions of the problem we face are far beyond what Congress anticipated in 1980 and what the existing Superfund law can hope to accomplish. We need to adopt this bill and swiflty enact this new program to show our constituents that we are serious about addressing this national problem.

The bill we are debating today goes far beyond the 1908 law. It would require the Environmental Protection

Agency to start cleanup studies at a rate of 150 in the first year, 175 in the second, and 200 each year thereafter. It also establishes a schedule for the start of actual cleanups, allows private suits where hazardous waste facilities may present an imminent endangerment to the health of the environment, establishes a broad-based funding mechanism and includes right-to-know provisions that are essential to safeguard the public's rights in this area.

There have been very difficult negotiations over the last few days between representatives of the committees with jurisdiction, and I want to commend in particular the chairmen and ranking members of my committee and subcommittee, Representatives DINGELL, BROYHILL, FLORIO, and LENT, and my colleagues and friends within the New Jersey delegation, Representatives HOWARD and ROE, for their efforts in fashioning a workable bill that can meet with broad, bipartisan support.

As a senior member of the House Committee on Energy and Commerce, I was active in the fight within my committee to assure passage of a strong Superfund reauthorization bill. My home State of New Jersey has 98 toxic dump sites and more of the Nation's 850 Superfund sites than any other State.

I am pleased that the committee adopted my amendment providing financial relief to the States by requiring the Federal Government to pay 90 percent of the cost of decontaminating polluted water at Superfund sites. Had my amendment not been adopted, States would have faced almost insurmountable obstacles in providing for the decontamination of ground water.

Mr. Chairman, I am pleased that the House finally has the opportunity to pass a strong Superfund bill, and I urge my colleagues to join with me in voting in favor of this important legislation.

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Mr. LENT. Mr. Chairman, I yield such time as I have left to the gentleman from Florida [Mr. BILIRAKIS].

The CHAIRMAN. The gentleman from Florida [Mr. BILIRAKIS] is recognized for 2 minutes.

Mr. BILIRAKIS. Mr. Chairman, I appreciate the gentleman from New York yielding me this time.

Mr. Chairman, when Superfund legislation was considered by the House Energy and Commerce Committee in July, I indicated my support for an expanded program which could be quickly signed into law.

I supported a $10-billion dollar fund which could be used to clean up this Nation's hazardous waste sites. And, I made it clear that I supported a program which would promote actual remedial work—not just endless courtroom litigation. I made it clear that I wanted taxpayer money to be spent on cleanups—not lawyers.

It was also my strong concern that any Superfund legislation serve the best interests of my home State of Florida. In this regard, I attempted to incorporate the concerns of the Florida Department of Environmental Regulation into my final position—and votes—within the Energy and Commerce Committee.

The bill before us today is not a perfect bill, and I indeed may support amendments to the legislation. But I believe on the whole that it is a good bill and a bill that will get the job done. The basic elements of the present Superfund law are preserved and expanded, a cleanup schedule is set and the funds are provided to begin the long task ahead.

So I hope that we will proceed today with this bill and get the job done. Our Nation's hazardous waste sites—and the people who are affected by such sites cannot wait any longer for Congress to act. Congress must be part of the solution and not part of the problem.

Mr. YOUNG of Alaska. Mr. Chairman, today we consider the Superfund Amendments of 1985. I rise in support of the provision concerning title IV, the Comprehensive Oil Pollution Liability and Compensation Act. This title establishes a comprehensive system of liability and compensation for damages caused by oil pollution. It is legislation that I and many of my colleagues have worked on for nearly a decade. The need for a uniform law to provide a comprehensive system as proposed is well recognized. I recommend that we all support this title.

It is my understanding that the report language reported by the Merchant Marine and Fisheries Committee in House Report 99-253, part 4, will be considered as part of the legislative history for this proposal except where the title has been amended in the substitute bill we are considering today. In particular, I would note that the lan-

guage regarding the Trans-Alaska Pipeline Liability Fund be referred to as part of the legislative history of that fund. I note that the report states a concern regarding the liability of officers and trustees of the TAPFL Fund that may continue after that fund is ended. It was noted that the fund could take all steps necessary and proper to defray any of the lawful costs associated with officer and trustee liability, including purchasing insurance and securing releases from satisfied claimants or contributors receiving rebates. Further, the TAPFL provision provides for the assumption of liability under this act for all TAPFL claims beginning on the effective date of this provision.

In summary, I support the oil spill title and again urge my colleagues to support this important provision.

The CHAIRMAN. All time for the Committee on Merchant Marine and Fisheries has expired.

The Chair will recognize the Committee on Ways and Means as soon as its chairman arrives. Pending that, the Chair recognizes the gentleman from New Jersey [Mr. HOWARD] the chairman of the Committee on Public Works and Transportation.

Mr. HOWARD. Mr. Chairman from the time allocated to the Committee on Public Works and Transportation on the majority side, I am happy to yield 2 minutes to a member of our committee, the distinguished gentleman from Texas [Mr. ANDREWS].

Mr. ANDREWS. I thank the gentleman for yielding time to me.

Mr. Chairman, as an early cosponsor of the bill reported by the Energy and Commerce Committee and as a member of the Public Works Committee, which reported a widely divergent document, I rise in support of this compromise legislation.

The compromise before us today contains elements which I both like and dislike. That is the nature of the compromise. But as I have said earlier, it is the product of difficult and sincere negotiations and has been reached in the true spirit of compromise. An inordinate amount of time and work has gone into the creation of this agreement, and I commend the leaders and staff of my committee and the Energy and Commerce Committee for their fine achievement.

Since 1980, it has become increasingly clear that the threats to human safety posed by hazardous waste sites and the technological barriers to their permanent cleanup and maintenance are truly monumental. EPA has estimated that there may be as many as 22,000 such sites in America with 2,200 of them posing such an extreme danger to human health that they will be placed on the agency's National Priority List. Other experts estimate that in the long run there may be as many as 10,000 priority sites requiring as much as $100 billion over 50 years to cleanup. It is critical that Congress act now to reauthorize Superfund. Before we lose more momentum in our cleanup efforts, we should enact this responsible, well-crafted, and bipartisan bill before us today in the House. It is tough, environmentally sound, and well-funded. It deserves our support.

Several issues have been of particular concern to me as the Superfund reauthorization debate has moved forward. The first is the new Superfund Research Program, under section 212. The Science and Technology Committee staff, and staff of the Energy and Commerce and Small Business Committees deserve our commendation for their hard work in crafting a new research and demonstration program under the EPA and the HHS which will spark new private sector involvement and initiatives in development of innovative technologies to reduce and detoxify hazardous waste in years to come. It is a groundkeeping new program which promises to deliver new ways to permanently rid us of these toxic wastes.

The compromise before us today would require 125 cleanup starts in fiscal year 1987, 140 in 1988, 160 in 1989 and 175 in 1990. This is a schedule EPA should be able to meet. This schedule will set the program on a realistic path toward important progress toward our tough cleanup goals.

The bill includes a settlement policy which conforms with the goals of achieving maximum private contribution and cleanup participation and citizen involvement. The compromise allows private parties a role in conducting remedial investigations and feasibility studies which is critical to ensuring private parties a greater role and deeper involvement in cleaning up the thousands of sites which will be on the NPL in years ahead.

The bill allows EPA the tools and discretion it needs to effect effective settlement agreements in a wide range of Superfund site situations. It allows releases from future liability where such a release is in the public interest as long as the remedial action is complete.

I believe these are good compromises. This bill represents an important step toward the critical goal of reauthorizing a strong, environmentally sound Superfund program over the next 5 years.

The CHAIRMAN. The Chair recognizes the gentleman from Ohio [Mr. ECKART].

Mr. ECKART of Ohio. Mr. Chairman, from the time of the Committee on Energy and Commerce, I yield 2 minutes to the gentleman from Oregon [Mr. WYDEN].

(Mr. WYDEN asked and was given permission to revise and extend his remarks.)

Mr. WYDEN. I thank my colleague from Ohio for yielding to me.

Mr. Chairman, it seems to me that my colleagues have touched on the key issue, and that is that Superfund is very definitely a fund but it certainly is not very super.

We have spent substantial sums of money and cleaned up very few sites. I think the central problem, Mr. Chairman, is that there is no such thing as a safe landfill. There is no such thing as a safe landfill in this country. You see that with Love Canal, for example, a dangerous site where the wastes were taken to a state-of-the-art landfill, they began to leak, and then we had to take them somewhere else. I think what we have to come up with is permanent ways to get rid of wastes. My colleagues, the gentleman from Texas [Mr. ANDREWS], the gentleman from New Jersey [Mr. TORRICELLI], the gentleman from Texas [Mr. STENHOLM], I, and a number of other colleagues have come up with a way to do it, I think. That is to set aside a significant amount of money for research. Down the road it is my view that this provision which has been worked out by a number of committees is the provision in the bill that is going to make a difference. It is the provision that is going to give us the way to make sure we do not generate these wastes in the future.

We are going to offer up several hundred million dollars for programs of research and development in the Department of Health and Human Services, the Environmental Protection Agencies, as well. It is my view that this provision which in the years ahead can take the Superfund Program which, as I said earlier, has been a super bust and turn it into a program that does not produce waste in the first place.

Mr. Chairman, I thank my colleagues from Ohio for the tremendous job that he has done and also my chairman, the gentleman from Michigan, as well.

Mr. ECKART of Ohio. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. WAXMAN].

(Mr. WAXMAN asked and was given permission to revise and extend his remarks.)

Mr. WAXMAN. Mr. Chairman, I rise in support of the legislation.

Mr. HOWARD. Mr. Chairman, I yield 2 minutes to a member of the committee, the gentleman from West Virginia [Mr. WISE].

Mr. WISE. Mr. Chairman, I thank the gentleman.

Mr. Chairman, I rise in support of the Superfund legislation. Probably no district has been under more national scrutiny than the Kanawha Valley that I am privileged to represent. Out of that has come legislation drafted by myself and the Congressman from New Jersey, DEAN GALLO, dealing with community right to know. What is it that the communities have a right to know?

Mr. Chairman, I appreciate the leadership of both committees for including this language almost in toto in the compromise version.

So when you vote for Superfund today, you will vote on several new areas, and one of them deals with the community's right to know. When you vote for community right to know, you will have the ability to tell your constituency that you voted for a bill in which every citizen of this country is now protected because they are guaranteed within 2 years there will be an emergency response plan if there is not one already, but there will be an emergency response plan to protect them.

You will also put into Federal law a right-to-know provision, a right-to-know provision that sets up not only one but two classes of chemicals so that those which are the most acutely toxic will have one set of reporting requirements requiring additional information; the other not quite as toxic but still very serious will also have reporting requirements. Indeed, the emergency response forces will have the ability and the knowledge to respond to every situation that should arise. You will also have the public availability of this information.

You will also be voting for civil penalties. You will be voting for civil penalties so that should there be a release, that there must be immediate notification of local authorities. You will be voting for the EPA to consider mandating criminal penalties.

Finally, for the first time, you will be directing the Federal Emergency Management Agency and giving them money, $5 million a year for several years, to assist States in developing these emergency response plans. So we will put into effect a protection across this country that every citizen in the country can take pride in. I am proud to have been part of this and to join with Congresssman GALLO, and I urge strong support of the Superfund legislation before us.

Mr. HOWARD. Mr. Chairman, I yield 3 minutes to the gentleman from New Jersey [Mr. TORRICELLI], a member of the Committee on Science and Technology which had input into this legislation.

(Mr. TORRICELLI asked and was given permission to revise and extend his remarks.)

Mr. TORRICELLI. Thank you, Mr. Chairman.

Mr. Chairman, I want to address an issue today that is not a point of controversy in this legislation. Six months ago, the Committee on Science and Technology heard testimony that led to an exciting addition to this legislation. We were told that one-half of all the storage facilities currently under construction could themselves become Superfund sites; that 87 percent of the repositories now in use are in danger of leaking their toxic contents into the environment.

The simple truth, Mr. Chairman, is that we have not been cleaning our toxic wastes at all. We have been involved in a toxic shell game. Moving toxic wastes from your State to my State is no answer—from your town to my town is no answer. It has, however, in the past, been the best that we could do. The answer now is in the future, however, and that is new technologies. Twenty-five biological or chemical processes in our country and countless technologies in Japan and Europe are destroying toxic wastes, not moving them but destroying them; not temporarily but permanently.

In Japan, these technologies have been so effective that a nation which once had the most toxic materials in storage now has none at all. Our legislation introduces this future to America. It requires EPA to evaluate these technologies, to provide samples from Superfund sites, to initiate at least 10 projects per year to evaluate their effectiveness.

In addition to Superfund legislation, it provides an impetus for companies to begin their own work. The irony of this approach is that these same companies that helped created Superfund problems will now help create a permanent solution. The same profit motive that helped spoil America can now be used to invite private enterprise to develop a solution.

Our amendment has many authors, but in particular, the gentleman from Florida [Mr. FUQUA], we are indebted to the chairman and to the ranking member [Mr. LUJAN], and the chairman of the subcommittee [Mr. SCHEUER]. I also want to give my thanks to Mr. ROE and to Mr. HOWARD. We are beginning an exciting new process in America, ending the movement of toxic wastes and beginning their destruction.

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Mr. HOWARD. Mr. Chairman, I yield 2 minutes to the gentlewoman from New Jersey [Mrs. ROUKEMA].

Mrs. ROUKEMA. Mr. Chairman, I rise for the purpose of entering into a colloquy with the distinguished chairman of the subcommittee, my colleague, the gentleman from New Jersey [Mr. ROE].

Mr. Chairman, as you are well aware and have demonstrated through your work on this subject, a new and potentially deadly environmental problem has come to the attention of Congress since the establishment of the Superfund 5 years ago. Higher concentrations of radioactive radon gas have been discovered in homes and businesses along a naturally occurring geologic formation in New Jersey, Pennsylvania, New York, and Connecticut, known as the Reading Prong. Potentially, over 250,000 homes in my district alone, the fifth district of New Jersey, could be affected by radon infiltration.

To date, the scientific community has been unable to develop conclusive data on both the exact nature and extent of the radon problem. I am aware of instances where, in the same neighborhood, adjacent homes have vastly different radon infiltration levels. Further, there is no clear understanding of just how much radon exposure is too much to maintain good health.

Therefore, I applaud your efforts to include funding in H.R. 2817 for radon gas research on the Reading Prong area. This bill properly requires the Administrator of EPA to determine levels of radon gas which pose a threat to human health. I am informed by local health officials, however, that national recommendations for remediation methods are vitally important.

Is it your understanding that the demonstration program included in H.R. 2817 will lead to Federal recommendations of methods to remediate radon contamination in homes?

Mr. ROE. If the gentlewoman will yield, I want to compliment the gentlewoman on her in-depth knowledge and understanding of this serious environmental problem affecting many of our States throughout the Nation. Her summation is totally correct, and that is the intent that is in the legislation. That is what we mean.

Mrs. ROUKEMA. I thank the chairman for his leadership. He provides a fine service.

Mr. HOWARD. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. SCHEUER].

(Mr. SCHEUER asked and was given permission to revise and extend his remarks.)

Mr. SCHEUER. Mr. Chairman, we are hearing this afternoon a great deal about the complexities and the complications and the intricacies of this bill before us, but we must not lose sight of the overriding purpose of this bill, that of protecting the lives, the health, the safety, and the well-being of the American people now and for generations to come.

Mr. Chairman, the very same technology that has improved the quality of life for our people over the last half century or more has also left us with some deadly byproducts. We have heard the expression, "Better living through chemistry." It is true; but there has been a price tag. Our Nation has inherited a legacy of toxic chemicals capable of damaging the brain, the kidneys, the liver, and causing other serious ailments for the elderly among us, pregnant mothers, infants and, most poignantly, Mr. Chairman, for the unborn.

Mr. Chairman, I fear that more families are going to be forced out of their homes and out of their communities. More families will lose hope and be thrust into despair, more families will suffer sickness and death before we learn how to cope effectively with the toxic waste problem.

While I had to vote against that bill, I expressed hope that it could be improved and strengthened in subsequent days.

Fortunately, that hope has come to pass. The compromise bill corrects most of the deficiencies which I saw in the Energy and Commerce bill.

This bill is a major step forward. It is a quantum jump forward. It specifies deadlines, targets, cleanup levels. This bill limits the discretion of the EPA and the OMB to procrastinate and delay action and to frustrate the will of the Congress and the American people.

More importantly, it protects the public's right to know and the public's right to sue. It also subjects big oil companies to appropriate levels of liability for damages caused by leaking underground storage tanks. The compromise bill also contains an important new program on research, development, and demonstration of new treatment technologies for cleaning up Superfund sites.

This program includes provisions contained in H.R. 3065, legislation reported by the Science and Technology Subcommittee on Natural Resources, which I chair, and the full Science and Technology Committee.

New technologies which can permanently clean up Superfund sites by destroying or detoxifying hazardous wastes are necessary if we are ever to end the present shell game of moving wastes from one leaking site to another.

The research program in the compromise bill will enable EPA, leading academic institutions, and the private sector, working together, to develop innovative techniques for cleaning up Superfund sites.

The compromise bill before us, if vigorously implemented, will get Superfund back on track. I congratulate Chairman DINGELL, Chairman ROE, Chairman HOWARD, and the minority members, who have helped achieve this marvelous compromise. It is not a compromise at all. It is far greater. It is a case where the whole is far greater than the sum of its parts. It is light years ahead of the bills that the two committees reported out to us months ago.

Mr. ECKART of Ohio. Mr. Chairman, from the time of the Committee on Energy and Commerce, I yield 2 minutes to the gentleman from Oklahoma [Mr. McCurdy], who has been very helpful in engineering a provision dealing with the Federal facilities.

(Mr. McCURDY asked and was given permission to revise and extend his remarks.)

Mr. McCURDY. Mr. Chairman, I want to join my colleagues in expressing my strong support for the compromise superfund legislation we are considering today. This bill reflects the widespread concern about the threat to public health and the environment posed by hazardous waste, and represents a strong national commitment to clean up toxic waste sites as quickly as possible. Its provisions have been developed by drawing upon the best environmental expertise, by intense negotiations among concerned interests, and with a lot of hard work.

As chairman of the environmental restoration panel of the House Committee on Armed Services, I can speak from personal experience when it comes to the role of intense negotiations and hard work in shaping this legislation over the past several months. Since its creation on July 29 of this year, the panel has been actively reviewing legislation and developing recommendations designed to strengthen and steamline the Department of Defense's Hazardous Waste Cleanup Program, and ensure its compliance with the Superfund statute.

The panel's immediate task was to review a bill introduced by Mr. Fazio, H.R. 1940, that was a comprehensive legislative proposal to place DOD hazardous waste cleanup efforts within the context of Superfund. Specifically, it would establish a Defense Environmental Restoration Program, improve coordination with the Environmental Protection Agency, State and local officials, enhance research and development efforts, and address special funding requirements.

Shortly thereafter, the panel's focus was expanded when the House Energy and Commerce Committee reported H.R. 2817, the Superfund reauthorization bill. For the first time, Superfund legislation specifically addressed cleanups at Federal facilities, including those belonging to DOD and the Department of Energy involved in the military applications of nuclear energy.

Although the magnitude of the DOD environmental restoration effort would have justified seeking sequential referral of H.R. 2817 by the Armed Services Committee, it was decided to allow the panel to develop recommendations that could be incorporated in amendments, or reflected in a common vehicle for floor consideration.

On September 26, the panel received testimony from the Department of Defense, the Environmental Protection Agency, and proenvironmental Members of Congress regarding toxic waste cleanup efforts at Federal facilities. On October 10, after extensive discussions with all interested parties, the panel unanimously approved amendment language.

The panel recommendations, I believe, would streamline hazardous waste cleanup efforts by Federal agencies. At the same time, our recommendations would allow meaningful State and local participation in the development and execution of response actions at Federal facilities. They would provide for the observance of promulgated State standards and siting requirements while retaining a means for reasonable Federal review. Finally, they would protect vital national security interests and data while preserving sensible notice requirements.

Ever since the panel acted, we have been engaged in intense and extensive discussions with the Energy and Commerce and Public Works and Transportation Committees, and other interested parties, in working out compromise language which could be incorporated into the Superfund bill. This has not been an easy task. The issues are complicated, there have been strong opinions on how to proceed, and the negotiations have been difficult.

Nevertheless, I believe that the result has been worth the effort and the bill before us deserves our support. It represents a responsible and balanced approach to toxic waste cleanup effort at Federal facilities. We are involved in an area where there are few textbook solutions and much uncertainty about how to proceed. Under the circumstances, the best approach is one which encourages innovation, cooperation, and good faith negotiation among all interested parties. This bill provides just such a framework.

This success would not have been possible without a tremendous amount of effort by the panel members and staff. I would specifically like to commend Mr. FAZIO and his staff for their hard work and spirit of cooperation. I would also like to express my appreciation to Chairman DINGELL, Chairman ROE, and their staffs for playing an instrumental and constructive role in accommodating the concerns of the Armed Services Committee panel members.

Mr. Chairman, I urge strong support for this Superfund reauthorization bill, and I believe its passage will be another important milestone in the effort to preserve the environment which we all share and wish to pass on to the next generation.

The CHAIRMAN. The Chair now intends to recognize the chairman of the Committee on Ways and Means.

The Chair advises the chairman of the Committee on Energy and Commerce, the gentleman from Michigan [Mr. DINGELL], that he has 12 minutes remaining, and the gentleman from New York [Mr. LENT] has 18 minutes remaining.

With respect to the Committee on Public Works, the gentleman from New Jersey [Mr. HOWARD] has 5 minutes remaining on his time, and the gentleman from Kentucky [Mr. SNYDER] has 12 minutes remaining on his time.

Mr. SNYDER. Mr. Chairman, I ask unanimous consent that the 12 minutes that I have remaining be given to the minority side of the Committee on Energy and Commerce.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The CHAIRMAN. That will mean that the gentleman from New York [Mr. LENT], from the minority side of the Committee on Energy and Commerce, will have 12 additional minutes.

The Chair recognizes the gentleman from Illinois [Mr. ROSTENKOWSKI], chairman of the Committee on Ways and Means, who has 30 minutes, following which the Chair will recognize the gentleman from Tennessee [Mr. DUNCAN], who also has 30 minutes.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, title V of the bill before us today is the financing title which provides $10 billion in revenue for the Superfund cleanup program. The level of funding is not at issue. Both amendments that will be offered to title V provide similar amounts of revenue.

The issue before us is the method we choose to finance hazardous waste cleanup. Let me provide a broad overview of the funding mechanism in the committee title and the two proposed amendments. Under title V, as reported by the Committee on Ways and Means, the following sources of revenue are provided for the Superfund Toxic Waste Cleanup Program:

First, a petroleum tax of 3.85 cents per barrel would raise $1 billion over the 5 years.

Second, a chemical feedstock tax on 43 organic and inorganic substances would raise $1.5 billion over the period. The taxable feedstocks would include only those taxed under present law, plus lead and certain feedstocks that are derived from coal. The committee also agreed to impose a tax on certain imported feedstock derivatives.

Third, a waste management tax would raise $1.5 billion over the period. A backup tax would be imposed on the generation of certain otherwise untaxed hazardous wastes. Several specific exemptions and credits are provided for the waste management tax.

Fourth, to raise an additional $4.5 billion, the committee agreed to impose an excise tax of $8 per $10,000 on the sale, lease or import of tangible personal property by the manufacturer or importer. Exports, unprocessed agricultural products, fertilizer and food products would be exempt from the tax.

Manufacturers would be allowed a credit for the amount of tax previously imposed on their purchases. In this sense, the tax is a multistage excise tax like a value-added tax or VAT. Small manufacturers and small import shipments would be exempt from the tax.

Fifth, to fund cleanup and related costs of leaking under-ground storage tanks, a tax of two-tenths of 1 cent per gallon would be imposed on gasoline, diesel fuel, and special motor fuels using the same base as present law excise taxes.

Last, the committee authorizes to be appropriated to the Superfund $180 million of general revenues over the period. Recoveries, penalties, damages, and interest would continue to be deposited into the fund.

Under the committee amendment, amounts in the Superfund would be available for expenditures incurred in connection with releases or threats of releases of hazardous substances into the environment. Funds would not be available for costs relating to natural resource damage claims.

The committee agreed to repeal the present Post-Closure Liability Trust Fund and the associated disposal tax. Previously paid taxes would be refunded with interest to the original taxpayers.

In response to proposals of the Committees on Merchant Marine and Fisheries and Public Works and Transportation, the Committee on Ways and Means agreed to establish an Oil Spill Liability Trust Fund financed by a petroleum tax of 1.3 cents per barrel. Amounts in the Fund would be available for cleanup costs incurred in connection with offshore oil spills.

Amounts in the Fund could not be expended to compensate certain damage claims or lost State and local tax revenues.

The amendments which will be offered by the gentleman from Tennessee and New York retain many of these same revenue measures contained in the committee title. However, the rates of tax imposed under the various measures are different. Also, the basic difference between the proposed amendments and the committee provision is that both amendments replace the proposed value-added tax contained in the committee's version of title V.

The amendment to be offered by the gentleman from Tennsessee would substitute both general appropriations and a triggered environmental surcharge. That amendment authorizes appropriations of $2.3 billion of general revenues over the 5 years this bill would be effective. Its environmental surcharge would be based on industry categories (SIC codes) and historical waste generated within those categories. The tax would be based on the number of employees in a company, using the Federal Unemployment Tax or FUTA base.

The amendment to be offered by the gentleman from New York contains a slightly smaller appropriation authorization of $1.6 billion of general revenues. It would include no value-added tax and no broad based environmental surcharge. Under that amendment, the petroleum and chemical feedstock taxes would be increased as would the waste management tax which taxes those who create wastes.

Both these amendments will be discussed in more detail later. As I indicated in a "Dear Colleague" letter circulated to members earlier, I will be supporting the amendment which will be offered by the gentleman from New York.

Mr. DUNCAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to commend our chairman for the hard work that he has done on this particular hard subject.

The House has before it the opportunity to choose from three very different alternatives of financing Superfund. My amendment does not include a value-added tax and does not provide a balanced funding package consistent with programmatic needs as approved by the committee of jurisdiction in those particular areas.

□ 1555

The committee bill contains a VAT which operates much like a sales tax but is hidden from the ultimate consumer and would be vetoed by the President. The amendment which I expect to be offered by my colleague, Mr. DOWNEY, would rely on large increases in taxes on chemical and petroleum feed stocks and waste-end taxes. It would cripple certain U.S. industries, particularly the chemical industry already handicapped in world competition.

My amendment recognizes the economic expansion and the protection of our environment are not mutually exclusive goals. There is no question but that the House will increase the economic resources committed to the clean up of hazardous waste. For us to fail to assure that the next generation is protected by the dangers posed by hazardous waste sites would be unthinkable. The amendment would fund the desired cleanup on a fair and efficient basis and encourage the prevention of future waste problems. I hope my colleagues will support my amendment which does not rely on hidden taxes and does not unduly burden our Nation's industries.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 6 minutes to the gentleman from New York [Mr. DOWNEY].

Mr. DOWNEY of New York. I thank the gentleman for yielding me this time.

Mr. Chairman, I want to discuss for a few minutes the amendment that I will be offering and also to try and deal with some of the arguments that are going to be made both pro and con.

I think the most appropriate place to start would be in 1984 when this issue was before the full House of Representatives. Then there were 322 Members of the House that voted for a bill that included a $5 billion revenue hit on chemical feed stocks and $2.7 billion in crude oil.

The amendment that I will be offering will be one that will have a $2 billion revenue impact on the chemical industry and a $3.1 billion on crude oil taxes. That simply means that we will be taxing the chemical industry far less than we did in the 1984 bill which had broad support, and taxing crude oil just slightly more than last year's bill.

The reason we do that and the reason I believe it is appropriate to support my amendment is that it preserves the idea that the polluter should pay and bear the responsibility for cleanup of toxic waste sites. The EPA has indicated time and again, most recently in one of their reports, that—and let me quote their report:

> Information about the past activities of responsible parties that is sufficient to operate a tax system is generally not available at a broad industrial level. Responsibility for past problems can be assigned, and it is more equitable for the tax burden to fall on the chemical industry and their customers than on the public at large.

This is the critical issue: Shall we deviate from the past where we have said while we cannot always tell who is responsible, we know pretty much that the people who generate the chemicals—the petrochemical industry, the oil industry, the chemical industry—are responsible for the toxic waste problem, and that their chemicals have been found in these hazardous waste sites. Or should we say to them, "Well, we understand that you are in part responsible, but we would like to tax a lot of other people who have absolutely nothing to do with the generation of hazardous waste or have had nothing to do with the creation of toxic waste sites."

It seems as though that by a very narrow margin, by one vote, that that was what the Ways and Means Committee has done. But I believe that the vast majority of Members on this floor want to preserve the idea that polluters pay.

Let us take a look at some of the more substantive reasons why the chemical and petroleum industries are concerned. According to the EPA, in 1981 they generated 71 percent of the waste, 29 percent was generated by other industries. Under their industrial share of the tax, under the value-added tax, a national sales tax, if you will, all other industries will pay 82 percent of Superfund and the chemical and petroleum industries will pay 18 percent. So it is quite clear, my colleagues, that they want to reduce their burden, and under a value-added tax, that burden is substantially reduced. A value-added tax would be an enormous mistake.

Not only is the value-added tax breaking this connection between who is responsible and who should pay, it is a bad value-added tax on top of that. It exempts, for instance, persons and entities that create waste but do business under $10 million. They could continue to pollute; they can continue to generate waste. They would bear no responsibility for their mess.

On top of that, as the Treasury Department has pointed out in a letter that has been widely circulated, it is a tax that can be avoided by shifting manufacturing and retailing within a vertically integrated corporate operation. That is not the sort of thing we want to do.

In addition, it also is expensive to administer, and in many ways, as I said before, it can be avoided. So before we take this leap into the unknown on the substance, we should be aware of what its shortcomings are.

No. 2, we should also understand something about the politics. I come from a marginal district, and I know many of my colleagues do. Do they really want to go home in an election year and explain that they were the vanguard of the value-added tax; that they saw the future, and the future was a national sales tax? And while it was only narrowly applied to Superfund, the door will have been wedged open for those who see the value-added tax as a way of generating money. I think not.

I believe that we want to preserve the idea that people who are responsible for the problem should bear the cost. We want to be the people who say to the American public at large that we had some difficult times raising revenue and dealing with revenue, but we believe in a broad-based income tax and not a sales tax as a way of financing activities of the National Government.

So we are going to, probably tomorrow or on Tuesday, get into this amendment in more detail. But if you keep these facts in mind and keep in mind as well—and before we shed any crocodile tears for this poor industry—the fact that the chemical industry is not on its back economically. The last year's revenue projections have indicated that they are in very good financial shape; they are not dying. The oil industry which laments this crude oil tax has far more of a concern with the severance taxes that their States levy on them. This is going to add 0.3 cents per gallon on the cost of gasoline, or a $1.50 for people who drive their car 10,000 miles or more. It is a minuscule tax; it can be easily assumed by the chemical industry, it will not hurt them. It can be easily assumed by the oil industry.

So we are here at the edge of the unknown or the beginning of the edge of the unknown, I would say to my colleagues. I would hope that they will view with very, very dim eyes the idea of a value-added tax, Mr. Chairman.

Mr. DUNCAN. Mr. Chairman, I reserve the balance of my time.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 7 minutes to the gentleman from Oklahoma [Mr. JONES].

(Mr. JONES of Oklahoma asked and was given permission to revise and extend his remarks.)

Mr. JONES of Oklahoma. I thank the gentleman for yielding me this time.

Mr. Chairman, I too rise in support of the Superfund extension. I think we have to clean up these orphan toxic sites, but I want to concentrate on that title of the bill that will finance the $10 billion that the other committees want to spend to clean up these sites.

In doing so, I would like to correct a number of myths that have come about in this debate. First of all, let me point out that this title of the bill, from the Ways and Means Committee, that Ways and Means had only one responsibility: Not how the money was to be spent, but how was the money to be raised.

Essentially, you have three ways in which to raise the money to increase the fund to $10 billion, which is what both the Public Works and the Energy and Commerce Committee asked us to raise. I would point out that both of those committees suggested that the bulk of that revenue be raised in a broadly based tax. That is precisely what the Ways and Means Committee did.

□ 1605

Now, the administration opposed a broadly based tax. They opposed it fundamentally because they did not believe $10 billion was needed to be spent to clean up the environment, to clean up these orphan toxic waste sites. They wanted to spend no more than $5.5 billion.

One of the fallacies of the Duncan substitute is that the remainder of the money, the $4.5 billion, would be borrowed or would be from general treasury to add to the Federal deficit. I think that is the wrong approach.

The other way to raise the money is to say let us forget about the other polluters; let us give them a free ride for what they have already done and what they are going to do in the future; and let us just pile this on two industries, the petroleum and the petrochemical industries. After all, that is who is paying most of the bill now. Let us just increase their tax about 15 times.

The question is, is that fair? I think that it is not.

The petroleum and chemical industries are not the major polluters. Last year when we dealt with EPA and with the Superfund, the EPA studies had not been completed. This year as we are dealing with this, we have an updated EPA study, as well as a Congressional Reference Service study. Those studies show that the chemical and petroleum industries only are responsible for less than one-fourth of the polluters in these toxic waste sites. Yet, under the Downey substitute, it would sock new taxes on these two industries. They would be responsible for paying about 80 percent of the cleanup costs, and they are only responsible, according to these studies, for about 23 percent of the problem, and a whole range of other industries would be let off scot free.

I would point to a couple of studies of EPA. One, a New York study of the toxic waste sites, the home State of my colleague from New York [Mr. DOWNEY], and it shows that 171 other types of industries are responsible for the pollution, and that chemicals are only responsible for about 17 percent and oil about the national average of about 4.5 percent.

In Indiana there is another study by EPA. It pointed out 171 potentially responsible parties identified and ranked as contributors of hazardous contaminants at the Northside Sanitary Landfill.

The point is if you put all the burden on these two industries, you are going to make them noncompetitive. They are going to be noncompetitive because they are going to have the burden of tax and their foreign competition will not, and I do not think that is fair.

Mr. Chairman, let me deal with some of the myths. In the committee when several approaches were taken as to how to raise the money, all of them were beaten and some of them soundly beaten, the only approach that raised a substantial amount of money that gained substantial support was a broad-based tax. A similar tax was defeated on a tie vote; this tax passed on a one-vote margin.

Now, when those who were on the other side lost, basically they started using myths and using terms that are not accurate to discredit the broad-based tax. They said it is a value-added tax.

Well, it is not a value-added tax, and I would support my contention in that by quoting from the Department of the Treasury as to what a value-added tax is. It is a multistate sales tax that is collected at each stage or point in the production and distribution process. This is not that. This is an excise tax imposed on the manufacture of tangible personal property at 0.08 percent, $8 out of every $10,000 of liability.

Furthermore, this committee broad-based tax does not, as some would argue, hurt small business. It specifically exempts small business. It specifically exempts retailers, wholesalers, and distributors. It applies only at the point of manufacture for domestic companies or at the point of importation for foreign companies. It is the only tax that affects foreigners as well as domestic producers.

Now, it is charged that it is regressive. Again, that simply does not hold up.

A Yale University study showed that this tax of only 0.08 percent is not regressive, would not even be a blip on the Consumer Price Index, and it is clearly less regressive than the Downey amendment approach, which would go directly into the increased costs of gasoline and home heating oil which affects lower income people disproportionately to higher income people.

So I think these myths need to be understood for what they are. They are simply myths. I think we ought to adopt the committee position. It is the fair way to clean up these orphan toxic sites, and it is the only way to make U.S. industry competitive in the international marketplace.

Mr. DUNCAN. Mr. Chairman, I yield 5 minutes to the gentleman from Minnesota [Mr. FRENZEL].

(Mr. FRENZEL asked and was given permission to revise and extend his remarks.)

Mr. FRENZEL. Mr. Chairman, I do not think there is any question that almost all the people in this body and in the county want to have a Superfund extension bill. They think we ought to have one this year. So do I.

The Ways and Means Committee jurisdiction only includes the financing necessary to fund the programs which were designed by other committees. The Ways and Means challenge was to find $10 billion over 5 years to finance the bill sent to us by committees of primary jurisdiction. All of us on this committee have some strong feelings about the bill, but our attention was concerned solely with the tax provisions.

As we worked trying to find $10 billion, we found quickly that there is no painless way to raise that amount of money. The current Superfund tax, which raises less than one-fifth of the $10 billion that we are looking for now, is a combination of an oil tax and a feed stock tax. It was based on the idea that the taxpayers who foot the bill, that is, oil and petrochemical companies, had some relationship with, used, created materials which were said to have caused the problem.

It was not a bad way to finance the

first phase of Superfund cleanup.

Now we are coming to the second phase. It is represented in this bill. This bill requires a great deal more money. The higher levels of expense caused the committee to go beyond those taxpayers who could be directly linked to the problem, and yet every proposal before us does still try to maintain such a linkage as is possible.

As we looked for other alternatives, the committee turned toward a value-added tax, called in this case a business transaction tax; and also looked at other financing sources.

The committee determined by the narrowest of margins, I believe an 18-to-17 vote, that a financing plan, including a value-added tax, or what is called a broad-based excise tax, or a business transaction tax, was the right way to go.

There was much feeling in the committee that we ought to look for other ways to finance as well.

The reason that I joined my colleague, the gentleman from New York [Mr. DOWNEY] in having a substitute made in order by the Rules Committee to stand as an alternate means of financing, is because of my great concern about the value-added tax which is called upon by the committee bill to fund nearly half of Superfund costs. I hate to be out of step with my good friend, the gentleman from Oklahoma [Mr. JONES], the previous speaker, but I do feel that the VAT creates a good deal of uncertainty.

The environmentalists who weigh in heavily on these matters are a little nervous that the tax may not be as reliable as its revenue estimates, and that therefore, it is, at least until we get used to it, an uncertain financing source.

Probably more important to me is that it goes way beyond the linkage basis that we established in the first Superfund legislation. It causes people who have no association with the problem to be obliged to pay for it. Maybe some of that is necessary, but in the committee bill nearly half of the financing is done through the VAT.

Business groups, particularly those who do not have association with the problem, retailers, food converters, and manufacturers and distributors especially, believe that the VAT unfairly penalizes their high volume business, which has little to do with the orphan dumps which we are trying to cure in the Superfund bill.

I believe as a matter of tax policy that the country is not quite ready for a VAT. Eventually we may need one. Nevertheless, before we impose any new tax, we need a national debate.

Certainly we need a national debate on the VAT. Most people equate it with a sales tax, competitive to States and local governments. People think it is regressive. I think we could tailor a progressive one, but I do not think we can do it without much additional work and discussion.

I am especially afraid that the weakest link of a value-added tax is that it can be raised without those who pay it, that is, the consumers of America, knowing what happened to them until it has happened. Because I do not like the value-added tax recommended by the committee, I join my friend, the gentleman from New York [Mr. DOWNEY] in supporting a different way of financing, which I hope that this House will accept.

Mr. STARK. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. Would the gentleman let me complete my discourse.

Mr. STARK. In due course.

Mr. FRENZEL. I believe, Mr. Chairman, that the tax which the gentleman from New York [Mr. DOWNEY] and I are supporting is an onerous one, particularly on the petrochemical industry. I wish there were a better way to structure it. However, this House, under the rule, will not consider any better, more certain, way to do it. Therefore, I would respectfully request that Members scrutinize the Downey-Frenzel amendment, and give it their favorable consideration.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. PEASE].

(Mr. PEASE asked and was given permission to revise and extend his remarks.)

Mr. PEASE. Mr. Chairman, like others, I rise in support of the Superfund bill, but to comment specifically on the revenue section of the bill which was in the jurisdiction of the House Ways and Means Committee.

I come down on the side of the amendment which will be offered shortly by the gentleman from New York [Mr. DOWNEY] and the gentleman from Minnesota [Mr. FRENZEL], which would strike from the bill the value-added tax, or business transfer tax, which was proposed by the Ways and Means Committee, I would emphasize, by a margin of only one vote.

I would like to point out to our colleagues in the House that the proposal contained in the Downey-Frenzel amendment is very similar, indeed in some cases less onerous, than the bill which passed this House overwhelmingly last year.

H.R. 5640 which was enacted by this House in the last Congress would have taxed chemical feed stocks to the tune of $4.3 billion.

The Downey-Frenzel amendment would tax chemical feed stocks by only $2 billion. Regarding petroleum, the bill we passed last year overwhelmingly would have taxed the petroleum interests $2.4 billion. There is a slight increase to $3.1 billion in the Downey-Frenzel substitute.

General revenue last year was in the bill at $2.3 billion. In this substitute, it will be $1.5 billion in recognition of the problems we have balancing the Federal budget.

Importantly, in the Downey-Frenzel amendment there will be $2 billion raised from the waste end tax, which clearly and directly derives revenue from the waste products themselves.

It seems to me that this is a fair approach. It is not new. It is one essentially that all Members of this House voted on 1 year ago and that the overwhelming majority of Members of this House voted for 1 year ago.

Like my colleagues before me, the gentleman from Minnesota [Mr. FRENZEL] and the gentleman from New York [Mr. DOWNEY], I am concerned about starting down the path of a VAT tax. VAT taxes are very widespread in Europe. They are known to be very regressive. If we start down this path, as has been pointed out, it will be only too easy to expand the tax and the taxpayer never knows the difference because it is in fact a hidden sales tax.

I think it would be unfortunate if we started down that path.

It seems to me understandable completely that the oil industry and the chemical industry would prefer to have somebody else paying for their bills, when in truth the waste end products that are polluting are derived essentially from those industries.

I hope when the time comes you will support the Downey-Frenzel amendment.

☐ 1620

Mr. DUNCAN. Mr. Chairman, I yield 4 minutes to the gentleman from Nebraska [Mr. DAUB], a member of the committee.

(Mr. DAUB asked and was given permission to revise and extend his remarks.)

Mr. DAUB. I thank the gentleman for yielding this time to me.

Mr. Chairman, let me say first I want to congratulate the Committee on Rules on bringing to the House a bill under a rule which I think is more than appropriate, particularly in light of the extensive debate we had on this subject a year ago. I vote generally against rules, and I did this time, which have budget waivers in them, but nonetheless, the rule itself does allow the committee, I think, to do its work and do it well.

Second, I wish to offer my congratulations to the five committees whose input, I think, has genuinely improved upon the effort that did occur here in the full House a year ago, and lastly indicate, before I make my own personal remarks about the bill in general, that I enjoy this particular subject because I had the chance to serve my own citizenry in the State of Nebraska on our own Environmental Protection Board and had a chance for 2 years to more fully appreciate and learn about and watch the real world effect on business and industry and individuals, on neighborhoods and communities with respect to issues like particulate emissions, sludge management, toxic waste and dumpsite cleanup and all those things that occur relative to resource recovery.

So I followed this bill with interest not only in the Committee on Ways and Means, of which I am a member and the tax implications that attach thereto, but as well the other subjects contained in Superfund legislation.

Mr. Chairman, I have been a strong supporter of an expanded Superfund because it is vital to expedite the cleanup process of hazardous wastes which threaten the health of our citizens.

The bill before us makes a substantial contribution to advancing Superfund's goals. I am especially pleased that this bill recognizes the importance of affordable insurance for response action consultants, engineers, and contractors. Their efforts are central to the success of carrying out the main function of Superfund: toxic waste cleanup.

The present court-ordered practice of subjecting those hired to fix a mess left behind by someone else is leading to a loss of insurance coverage driving out those who want to engage in the cleanup business.

Don't take my word for it, ask Ralph Nader. Even he has recognized that cleanup firms aren't getting the necessary insurance. Of course, our diagnoses of the reasons behind this problem differ. Mr. Nader declares that the problem is some sort of dark conspiracy foisted on cleanup contractors in an effort to reap unjustified profits.

I see the problem more in terms of wide-open Liability imposed on cleanup firms for the actions of others who may not be available for suit.

In my district, a reputable firm, Henningson, Durham & Richardson Environmental Technologies, Inc., had been supplying about $5 million annually in engineering services for Superfund cleanup. However, because of the liability risks under current law, their insurer withdrew their policy. This firm has subsequently stopped all cleanup activities nationwide.

The situation has been magnified across the country. On Janury 1, 1985, fewer than a dozen companies offered professional liability insurance to engineering firms attempting to neutralize toxic hazards under Superfund. Since that date, three of these companies have decided not to offer this service. Of the remaining companies, only two are said to be considering taking applications for coverage from previously uninsured firms.

During hearings on H.R. 3852, I urged the Public Works Committee to provide that cleanup agents are only liable for negligent or grossly negligent actions. I am pleased to see that all committees involved recognized this problem and adopted this remedy. Without these changes, increasing numbers of responsible cleanup agents will leave the market, ensuring that the least responsible parties are the only ones which participate in carrying out the basic goal of Superfund: getting rid of toxic waste.

Mr. Chairman, I want to indicate that I do not like the tax provisions and thought the chairman's original proposition before the Committee on Ways and Means was much better than all the alternatives being offered. I think the figure ought to be $7.5 billion. I do not think we ought to have a VAT, but I am pleased to see that food and food processing has been exempted from the process of what might turn out to be a very onerous and burdensome tax.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. STARK].

(Mr. STARK asked and was given permission to revise and extend his remarks.)

Mr. STARK. I thank the gentleman for yielding this time to me.

Mr. Chairman, I rise in strong support of the Frenzel-Downey amendment and I would ask the author, the gentleman from Minnesota, if, as I read a definition of a sales tax from Webster's dictionary as a tax levied on the sale of goods and services that is calculated as a percentage of the purchase price and collected by the seller, if that is not exactly what the distinguished gentleman from Oklahoma [Mr. JONES] has in this bill, a sales tax.

Mr. FRENZEL. Mr. Chairman, will the gentleman yield?

Mr. STARK. I would be glad to yield to the gentleman from Minnesota.

Mr. FRENZEL. I thank the distinguished gentleman for yielding.

Mr. Chariman, I have always thought that if a tax had feathers and webbed feet and quacked like a sales tax, it was likely to be a sales tax.

In my judgement, the business transaction tax in this bill comes as close to being a sales tax as pretty near anything I can imagine. Transactions at every state of production will be taxed. It will be a burden, in my judgment, on the consumer.

Mr. JONES of Oklahoma. Mr. Chairman, will the gentleman yield, since my name was mentioned?

Mr. STARK. In just a moment.

Since the gentleman comes from farm country in Minnesota where they have many great dairy farms, it is possible there that manure could pollute the water in Minnesota in some cases. Is that not the case?

Mr. FRENZEL. Feedlots have been a problem.

Mr. STARK. Would the gentleman in that case tax milk if he were going to clean the manure out of the water stream?

Mr. FRENZEL. No politician in his right mind in my State would tax milk, I will tell the gentleman.

Mr. STARK. But in effect, would this not be the case? Would we not be taxing the milk cartons under this bill to help in the cleanup?

Mr. FRENZEL. In my judgment, we will be taxing every item encompassed.

Mr. JONES of Oklahoma. Mr. Chairman, will the gentleman yield?

Mr. STARK. I would be glad to yield to the gentleman from Oklahoma, the author of the sales tax.

Mr. JONES of Oklahoma. The gentleman is very humorous, but he obviously has not read the committee's bill because both of the examples which the gentleman uses are exempt.

Mr. STARK. But it would tax the wagon that spreads the manure.

Mr. JONES of Oklahoma. The gentleman might be better advised to read the committee bill and the Tax Code than the dictionary because he might be more enlightened in that way.

Mr. STARK. I thank the gentleman for his advice.

I think in all seriousness that this country, before it enters upon the path of having a value-added tax, which is insidious in the way it can be constantly ratcheted up without the consumers or the taxpayers even recognizing that we are doing that to them, that we stop that, we nip it in the bud, we support the Downey-Frenzel amendment which would prohibit a sales or value-added tax from coming into our law at this point. It is a dangerous, dangerous precedent and I hope we can stop it here today.

Mr. JONES of Oklahoma. If the gentleman would yield further, it is neither a value-added tax nor a sales tax, and I would point out that next week we are taking up a tax reform bill out of our committee. There are 15 excise taxes administered the same way as this excise tax. I will not call those excise taxes a value-added tax next week and I would appreciate the gentleman not calling this an excise tax.

Mr. STARK. Mr. Chairman, reclaiming my time, I hate to correct the gentleman, but excise taxes are collected by the Government, sales taxes are collected by the seller, as would be the case under the Jones sales tax. I urge support for the Downey-Frenzel amendment.

Mr. DUNCAN. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. Gradison], a member of the committee.

(**Mr. GRADISON** asked and was given permission to revise and extend his remarks.)

Mr. GRADISON. I thank the gentleman for yielding this time to me.

Mr. Chairman, both the Senate and the Ways and Means Committee have voted to fund the Superfund, in part, through a broad-based Superfund excise tax, or "SET." I support this approach as one element of Superfund funding because it is equitable and reliable, and because it won't increase the deficit. I believe that it is the only practical way to achieve an expanded Superfund of $10 billion.

The original Superfund Program, enacted in 1980, taxed primarily the petroleum and chemical industries. These two industries have paid more than 95 percent of the feedstock taxes that have financed the bulk of Superfund. A major increase in current petroleum and feedstock taxes would, in my judgment, unfairly burden the chemical and oil and gas industries and place them at an unfair disadvantage with foreign competitors.

Opponents of a SET argue that a broad-based tax violates the "polluter must pay" philosophy. A year ago, however, EPA identified wastes from more than 4,000 existing businesses and governmental units at Superfund sites. The potentially responsible parties identified by EPA include virtually every size and type of company and industry, all sectors of government, universities, and even religious organizations. A broad-based tax such as SET would ensure that all those responsible for hazardous wastes found a Superfund sites would contribute a small portion to the financing of the Superfund.

We have before us today alternatives to a broad-based tax. Both the Downey and Duncan approaches would increase funding from general revenues to help compensate for eliminating SET. But with the Federal deficit at close to $200 billion, it makes no sense to me to place a greater strain on the general fund by adding to the deficit. Some also advocate use of borrowing authority as an alternate funding source; this, however, is essentially equivalent to taking money from the general fund and adding to the deficit.

I agree with those who argue that hazardous waste is a societal problem. I do not agree, however, that we should therefore add to the deficit through use of the general fund as a means of financing Superfund. SET provides a way of spreading the societal burden in a broadbase equitable manner.

SET would be a reliable tax, which is essential for any funding source. It would tax all manufacturers, except small companies. It would not apply to retailers, wholesalers, or distributors. SET would be imposed at a very low rate—80 cents for $1,000 of taxable revenues.

Furthermore, SET would be applied to imports, but not to exports, thus putting foreign manufacturers on an equal footing with domestic producers. Thus, goods leaving this country would not carry the tax, which would help even the competition between foreign and U.S. manufacturers. Finally, SET would require little or no additional recordkeeping because it is calculated from figures and information already required on income tax returns.

In summary, I believe a broad-based tax is necessary if we are to have a $10 billion Superfund and avoid further increases in the deficit.

☐ 1630

Mr. ROSTENKOWSKI. Mr. Chairman, how much time do I have remaining?

The CHAIRMAN. The gentleman from Illinois [Mr. ROSTENKOWSKI] has 5 minutes remaining and the gentleman from Tennessee [Mr. DUNCAN] has 16 minutes remaining.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. PICKLE].

(Mr. PICKLE asked and was given permission to revise and extend his remarks.)

Mr. PICKLE. Mr. Chairman, when the Superfund Program was first debated back in 1979, as much as anything, it was because we had some oil spills on the gulf coast and on the eastern coast and we also discovered the Love Canal area of New York. It was important that we start the program and start to clean up these abandoned sites. This was done. Some progress has been made.

Now after 5 years, it is time to ask ourselves as we reauthorize the program, who should pay for it. At this time, the oil and chemical industries are paying anywhere from 85 to 95 percent of the cost of this program.

One might argue that 8 years ago that was proper because we did not have the facts. That is not true today. Today, we know there is virtually no correlation between those who pay the tax and those who contributed to the waste problems. We have those facts.

In all fairness, we ought to have a broad-based tax to fund this program. Today there are over 2,000 sites that need attention. The EPA has been too slow in asking that these various sites be cleaned up. We ought to pursue this cleanup more aggressively, and we ought to do it with funds that come from a broad-based tax.

It is easy to say that you want to be opposed because you "call" it a sales tax, or it is easy to say we will finance it by increasing the general revenues and the Federal deficit by $3 or $4 billion. Very few of us, I think, in our right mind, want to add to the national deficit another $4 billion.

So surely the fair and equitable thing to do is take this broad-based tax to pay for the cleanup of these orphan sites.

This funding approach was passed by our committee. It was passed by a close vote, but it was endorsed by the committee, and there are not many on the committee who are from what you would call just the oil or chemical states. It was the decision of the Committee on Ways and Means that we ought to have a fair, broad-based tax, and that is why that is in this bill.

So I hope that you approach this decision tomorrow without prejudice and ask yourself what is fair, what is equitable. Why should we not have a broad-based tax?

If we do that, then I think we can renew this program as it ought to be renewed and go forward and attack abandoned hazardous waste sites on a fair and equitable basis.

Mr. DUNCAN. Mr. Chairman, I yield 3 minutes to the gentleman from New Hampshire [Mr. SMITH].

Mr. SMITH of New Hampshire. Mr. Chairman, I would like to commend my colleagues for finally getting H.R. 2817 to the floor. This is a very important piece of legislation.

Mr. Chairman, I rise today in support of the Downey-Frenzel amendment, a bit reluctantly, but we really do not have a choice. The most crucial vote today will be on this amendment, because the Ways and Means Committee package contains a value-added tax. You can call it anything you want. I have heard it called an excise tax. You can make it pretty by claiming it is a trade-neutral tax. But it is nothing more than a national sales tax. That is what it is, VAT tax which unnecessarily jeopardizes the entire Superfund Program.

I cannot support the Ways and Means funding package due to the negative groundbreaking precedent of a VAT tax included in this package. The Congress consistently has opposed a national sales tax which amounts to disproportionately distributed taxes on society with the burden of the tax on many of the necessities in life, the poor and the elderly.

While I recognize the societal nature of the problem which we face, a general revenue-funding provision for Superfund addresses this concern. The principle of polluter pays is grounded in environmental law, and Downey-Frenzel is consistent with this major principle.

A VAT tax jeopardizes unnecessarily the entire Superfund Program. The administration will certainly veto the tax and the program. In addition, as a tax increase, the Ways and Means Committee VAT tax is unacceptable.

For years, the Manchester Union Leader in my district has been a leader in reflecting or molding public opinion in New Hampshire and the surrounding area.

I note that Mr. Jim Finnegan on the editorial page of that paper points out that "Once the citizenry has been alerted, the response should be overwhelming," and that not even the House of Representatives' leaders "could stay a national revolt against this levy once the Nation's taxpayers were alerted."

This is a point which I believe should be made as we debate H.R. 2817.

The body politic of America basically does not know that our first national sales tax could be passed by both Houses of Congress by the end of this week.

Neither the Senate nor the House has held public hearings on the VAT. No congressional hearings.

The Nation's press scrutiny of the measure has been meager, at best. We in the House this week will vote on a value-added tax, or a national sales tax, completely in the dark. We have received no massive mail campaigns, no petition drives, resolutions from town councils or civic groups.

The reason is obvious. The American public does not know the reality or the ramifications of this vote.

Do you want to be on record, I ask my colleagues, do you want to be on record supporting the first national sales tax in the United States of America? Superfund is too important, it is too important to pit it against a national sales tax.

I urge my colleagues to support the Downey-Frenzel amendment and kill the national sales tax which I feel is inappropriate.

Mr. ROSTENKOWSKI. Mr. Chairman, I reserve the balance of my time.

Mr. DUNCAN. Mr. Chairman, I yield 3 minutes to the gentlewoman from Rhode Island [Mrs. SCHNEIDER].

(Mrs. SCHNEIDER asked and was given permission to revise and extend her remarks.)

Mrs. SCHNEIDER. Mr. Chairman, I would like to wholeheartedly throw my support behind the Frenzel-Downey amendment, most enthusiastically. I think that there is very little question that the proposal that we are looking at today for the Frenzel-Downey amendment is the most fair and the most effective way for us to finance the Superfund.

Insofar as looking at establishing a philosophy in dealing with future environmental problems, of focusing on the polluter-must-pay concept, I would like to share with you a little bit of insight that has been brought to my attention by Murray Weidenbaum, who says that what we need is a tax on pollution, a tax approach that will help reduce the amount of hazardous waste generated in the first place.

"The pollution tax approach is inherently fair, by focusing on the generation of hazardous waste directly and giving them a strong incentive to reduce the amount they generate. In contrast," what we are talking about in the committee bill is, "the manufacturer's excise tax falls equally on 'the just and the unjust.' Two companies with the same sales volume will pay the same tax even if one generates 10 times as much hazardous waste as the other."

Moreover, if one of the companies should happen to invest in our latest technology, which this country is fortunately providing some competitive edge as a result of the President's investigation into our international competitiveness, we would be providing an incentive for investment in the technological changes necessary for recycling and reuse.

"As for the proposed financing mechanism being considered by the committee, it has many negative characteristics. Because it bears no relationship to the generation of hazardous waste and yet it is so broadly based, the tax really is a form of national sales tax."

I think it is a very bad precedent, as previous speakers have indicated. I think that it is important to point out that when a tax bears no relationship to the policy that environmental protection is attempting to establish, that we are taking the wrong approach.

I think it is also improtant to point out that Superfund financing, by establishing a value-added tax, is opposed by the President.

I might also point out to the chairman of the Ways and Means Committee that a very large coalition of manufacturers, unions such as the American Federation of State, County and Municipal Employees, and also the Citizens for Tax Justice are opposed to the value-added tax.

And last but not least, I would like to point out, as the previous speaker had indicated, that the citizens are, in fact, aware of the impact of this particular tax, and through the National Taxpayers Union, they are voicing their opposition. Not only have these various organizations indicated their opposition to the commitee's proposal for financing, but the Chicago Tribune, the Minneapolis Star and Tribune, the Seattle Times, the Detroit News, the Sacramento Bee, the St. Louis Globe and Oregonian and many other newspapers across the country made it quite clear that we are not at all anxious to have a value-added tax.

Therefore, I urge my colleagues to support the Frenzel-Downey amendment.

Center for the Study of American Business,
November 18, 1985.

Hon. William Frenzel,
U.S. House of Representatives,
1026 Longworth House Office Building,
Washington, DC.

Dear Bill, I am taking the liberty of offering some personal comments on the way in which the Ways and Means Committee is dealing with the Superfund financing question.

At least to this economist, the Congress is missing a great opportunity. Given the immense task to which Superfund is addressed, the financing mechanism should—and can—be used to help directly. What I have in mind is a tax on pollution, a tax approach that will help reduce the amount of hazardous waste generated in the first place.

The pollution tax approach is inherently fair, by focusing on the generation of hazardous waste directly and giving them a strong incentive to reduce the amount they generate. In contrast, the manufacturers excise tax falls equally on "the just and the unjust." Two companies with the same sales volume will pay the same tax even if one generates ten times as much hazardous waste as the other.

Moreover, if one of the companies cuts its hazardous waste in half that will not reduce its Superfund tax. Similarly, if the other doubles its hazardous waste that will not increase its tax. The Congress has developed here a recipe for a perpetual motion machine!

As for the proposed financing mechanism being considered by the committee, it has many negative characteristics. Because it bears no relationship to the generation of hazardous waste and yet it is so broadly based, the tax really is a form of national sales tax. It is a hybrid VAT/manufacturers excise tax. Not too surprisingly, it has aroused fears of opening the door to a full-fledged value-added tax. It is a bad precedent.

The Congress seems to have lost sight of its original objective, to make the polluters pay. Of course, the existing tax focuses on just two industries, and on inputs rather than outputs. But my suggestion is to start with that tax and convert it into a true pollution tax. In that way, Congress will get a "twofer"—financing for Superfund and a new incentive for industry to reduce the magnitude of the hazrdous waste problem.

I hope that these thoughts may be of some help. All the best.

Sincerely,

Murray L. Weidenbaum.

Mr. DUNCAN. Mr. Chairman, I yield 3 minutes to the gentleman from Pennsylvania [Mr. Ritter].

(Mr. RITTER asked and was given permission to revise and extend his remarks.)

Mr. RITTER. Mr. Chairman, there has been a lot of talk on the floor about how the polluters should be the payers, and I agree. All three competitive tax measures have a waste and tax. It is only the Downey-Frenzel amendment which goes a half a billion dollars plus on the waste and tax. So in all the measures, the polluters are being called upon to pay.

We should recognize that there have been some collection problems thus far in States that have "waste end" tax. The revenues have fallen short.

Actually, we are not even sure of the impact of a national "waste end" tax. Reducing pollution, which is good, will also reduce revenues.

We have also heard about consumers paying. Let us be very clear: A tax is a tax is a tax, and the consumer will pay that tax one way or another, whether he pays it at the gas pump (Downey-Frenzel), whether he pays it at the department store (Ways and Means approach) or whether he pays it in his heating oil bill (Downey-Frenzel). The consumer will pay that tax.

Now let us talk about jobs, let us talk about jobs in basic industries. The tax plan of Downey-Frenzel treats imports more favorably than domestic products whereas the committee bill, the Ways and Means bill, treats them the same. So in one approach, the Ways and Means approach, will not have an advantage over domestic products.

Our basic industries are reeling, our basic industries are hanging on by their fingernails, and we are going to put on them a new tax that treats imports better than domestic products produced by American workers.

We talk about feedstock tax being a petrochemical industry tax. Baloney. A feedstock is used by all of our manufacturing industry who buys feedstocks? Consumers are not buying feedstocks. Your automobile industry is buying feedstocks, producers of American manufactured products are buying products made by feedstocks, paper producers and plastic products producers are buying products made from feedstocks. Those product costs will go up, our domestic manufactured product costs will rise making imports more attractive which will hurt American jobs.

So I urge my colleagues to put aside some of these myths and to take a clear look at who is responsible for polluting, because that is really the bottom line. If you look at the waste sites, something like 15 to 20 percent comes from petroleum and chemical companies. The rest is "manufacturing America." Everybody is using chemicals. Chemicals are the grease for the gears of a technological society, and they are pervasive, everybody who produces products is using them; the majority of polluters are a broad cross-section of American manufacturers. Therefore, the majority or a goodly portion of the tax should be shared by those same manufacturers.

☐ 1645

Mr. DUNCAN. Mr. Chairman, I yield 5 minutes to the gentleman from Louisiana [Mr. MOORE].

(Mr. MOORE asked and was given permission to revise and extend his remarks.)

Mr. MOORE. Mr. Chairman, I thank the gentleman for yielding.

My colleagues, coming from Louisiana as I do, cause me to have a very unique view of all this process, because we are on both sides of the problem. We have the toxic waste sites; too many of them, I might add. We also have the people who pay the taxes.

As a matter of fact, 25 percent of all the money paid into Superfund came out of Louisiana employers. That is in a State, which I might remind the Membership, happens to be the second highest unemployed State in the union; 11.6 percent.

Now we are talking about increasing this fund from $1.6 billion to $10 billion; and I agree with that, it should be done, we have a serious problem. The question is, Who is going to pay for it?

It is very easy to sit here in piousness and talk about, "the polluter should pay," as if we have all the facts and we know all the answers, and these people in Louisiana, Texas, and Oklahoma that have been paying all the tax now, do all the polluting.

This is wrong, and we are not listening to the evidence. I hope overnight we will stop and take a look at it; that is not the case.

The question is, who are we going to put this tax burden on when we increase this tax? The truth of the matter is, there is really no absolute way to find out who should pay what percent and resolve that across the board; it really cannot be done.

There are people who pollute once in a while; there are people who pollute on a regular basis. It is very difficult to assess exact responsibility so anything we draw up is going to be imperfect in that regard, but we have to draw up something.

So the question is, Who should pay? If the truth of the matter is known, if we stop and think about this for a minute we should admit that everybody in America ought to pay an environmental surtax. That is right—everybody in America, every individual, every business, everybody; because everybody receives the benefits from cleaning up toxic waste in this country; and to a great extent, everybody contributed to it.

If you are using consumer goods that caused toxic wastes, why should you not pay part of it? If you are the manufacturer that made it, why should you not pay part of it? But we don't, and we won't.

We know why we are not going to pass such an environmental surtax; because no one here really wants to pass a tax on the American people and all business people and your constituents. No one here will do that. That is not politically palatable.

So instead let us raise the tax—you may be thinking—only on those hapless souls that are paying it now, whether they caused all the waste or not. Maybe when it was $1.6 billion that was a tolerable, but unfair thing. But when you raise it to $10 billion, it is not only unfair; it is unpalatable and it cannot be tolerated.

So let us face it; we really do not want to be fair; we do not really want to have anybody in our congressional district pay part of those taxes; we want someone else to pay it, and so we stand up and say, "Oh, this is a VAT tax." It is not a VAT tax. It is not a tax at every stage of production, which is what a VAT tax is; it is an excise tax; just like on cigarettes or gasoline. So it is not a VAT tax.

And do not stand up here and say that only polluters should pay and those paying now are the only polluters because that is wrong again.

The EPA says only 13 percent of these toxic waste sites across the country were caused by chemical companies; 13 percent. Who caused the other 87, my friends? Who caused them?

Let me give an example. The EPA says that at a site they looked at in Zionsville, IN, they found that more than 200 companies contributed hazardous wastes at that site. The top 20 contributors to the Northside site, came from all across corporate America.

Eli Lilly, pharmaceutical manufacturer is listed by EPA as the largest contributor to that site. They pay nothing now and would not, under the Downey amendment. Others were Alcoa, Ford Motor Co., Fred's Frozen Food, Anheuser-Busch, Best Foods, Coca-Cola, Frito-Lay, General Foods, Chevrolet, General Electric, Honeywell, Kodak, McDonnell Douglas, the University of Minnesota, Western Electric, Westinghouse, Whirlpool, and many others.

The second biggest contributor at that site was the Indianapolis Department of Public Works.

None of these would pay any taxes under Downey; and my point is they should and would under the broad-based excise in this bill.

Now what is fair? Before we run the chemical industry out of the country and completely overseas, worsening unemployment in my State and elsewhere just like we perhaps have done with steel and with automobiles by unwise Government decisions in the past, think twice.

The people we are about to have pay 100 percent of these taxes, as they have done in the past, and under Downey are contributing nowhere near that amount of the toxic waste. Fairness would dictate that we look for a broad-based tax that spreads that burden across all people who are creating the waste, or enjoying the benefits of cleaning up those wastes.

The best the Committee on Ways and Means could do is this excise tax. The Downey amendment is nothing more than an opportunity to simply shield all of you from having to pay any taxes, and just increase it on those who are now paying all of an unfair tax, an unpalatable tax.

Mr. DUNCAN. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The Committee on Energy and Commerce has 30 minutes remaining, the gentleman from New York [Mr. LENT] has 30 minutes remaining, and on the majority side, the gentleman from Michigan [Mr. DINGELL] has 12 minutes remaining.

With respect to the Committee on Public Works and Transportation, the gentleman from Kentucky [Mr. SNYDER] yielded back the balance of his time, and the gentleman from New Jersey [Mr. HOWARD] has 5 minutes remaining.

The Chair recognizes the gentleman from Ohio [Mr. ECKART].

Mr. ECKART of Ohio. Mr. Chairman, on behalf of the Committee on Energy and Commerce, I yield 2 minutes to the gentleman from Kansas [Mr. SLATTERY].

Mr. SLATTERY. Mr. Chairman, I

would first like to express my deep personal appreciation to the chairman of the Committee on Energy and Commerce, and the chairman of the subcommittee, Mr. FLORIO, and the gentleman from New York [Mr. LENT] on the other side of the aisle for their dedicated work in trying to craft a compromise on this very complicated and technical piece of legislation.

I am sure there are many of my colleagues who find themselves in the position oftentimes of having to vote for one extreme or the other; and I am happy to report in this particular case I think we do have a compromise, one that will not satisfy the extremes on either side of this issue, but one that is certainly a responsible piece of legislation.

I am especially pleased that we were able to work out a very sensible compromise on the question of cleanup schedules, which was very troublesome at the committee level.

We will have a schedule that will require the Environmental Protection Agency to commence cleanup on 125 sites in 1987. That number will increase gradually to 175 by fiscal year 1990.

In addition to that, we were able to resolve the question of cleanup standards, which was equally troublesome at the committee level. We also have some good language in this legislation dealing with the question of Federal facilities. Federal hazardous waste sites are made part of the Superfund Program under this bill, and placed on a schedule to clean up, and I think that is extremely important.

Community right-to-know provisions in this bill are excellent. The compromise bill does contain language that will assure that the public has access to important information about hazardous chemicals being stored in their community.

Leaking underground storage tanks have been addressed in this bill, and I think in a responsible fashion.

Finally, Mr. Chairman, I would point out that the funding level of $10 billion is a reflection of the realization on the part of the committee, that we have a serious problem that demands immediate action, and I think that the $10 billion funding level is a reasonable response to the kind of problems that we have in this country, with hundreds of toxic waste sites that are literally threatening the health and the environment of our country.

So, Mr. Chairman, I rise in support of this bill, and I urge my colleagues to support it.

□ 1655

The CHAIRMAN. The Chair would like to clarify that the Chair misstated the time remaining. Because of the fact that the gentleman from Kentucky [Mr. SNYDER] yielded the balance of his time, which at that point in time was 12 minutes, and there were 18 minutes remaining, the gentleman from New York [Mr. LENT], ranking member of the Committee on Energy and Commerce, has 30 minutes remaining, for the Committee on Energy and Commerce, the gentleman from Ohio [Mr. ECKART] has 10 minutes remaining, and the gentleman from New Jersey [Mr. HOWARD], Chairman of the Committee on Public Works and Transportation, has 5 minutes remaining.

The gentleman from Kentucky [Mr. SNYDER], in light of the fact that he yielded back the balance of his time, has no time left.

Mr. LENT. Mr. Chairman, I yield 4 minutes to the gentleman from Pennsylvania [Mr. RITTER], a member of the committee.

(Mr. RITTER asked and was given permission to revise and extend his remarks.)

Mr. RITTER. Mr. Chairman, I rise in support of this compromise measure. I would like to congratulate all the parties associated with arriving at this compromise. This compromise started about 10 months ago and went through a variety of difficult times. But I think it is a tribute to the legislative process and the ability to forge bipartisan relationships and compromises that led to the point at which we are on the floor today.

In the beginning there were some great differences over how far the bill should extend, and we were able to narrow down the scope. Basically, we were interested in cleaning up hazardous waste dumps, not solving all of the pollution problems which America faces.

In the beginning we had controversies over schedules and whether or not we should be bound by mandatory deadlines for cleanups of sites that we were really quite unfamiliar with. I think the resulting compromise reflects both the necessity to hold EPA's feet to the fire and the necessity to give the Environmental Protection Agency some flexibility in these matters.

In terms of how clean is clean, we came a long way from the beginning where we were quite far apart on how strong, how strict, the standards should be. Obviously, we all wanted to have the cleanest possible sites after cleanup, but we knew that the fund had only a limited amount of money and that to get realistically health-protecting standards was our goal. I think by and large we have achieved that.

Very important was the feature of settlements. I think we were fairly close at the beginning, but there was still a question of "releases." At some point the release of the private, responsible party has to be given. There had to be some ability of the Environmental Protection Agency to let go so that there is an incentive for private, responsible parties to settle, as opposed to hold off and forever litigate. We've made progress on that front too.

On "community right to know," there still may be some differences. But we came from a point where there was no community right to know built into the Superfund bill to what I think is a workable procedure to inform those parties who are indeed responsible for cleanup when the necessity for cleanup of an emergency situation arises; there will be amendments that we will be faced with in the area of community right to know. I urge my colleagues to just ponder the situation as it exists. We have gone very far to provide heretofore unknown levels of community right to know. We have gone very far in providing really vast quantities of new information to communities and community organizations who are not accustomed to dealing with such information. We will also face amendments in the area of citizens suits, to expand the citizens suit capability via a new "Federal cause of action." We have already gone very far, perhaps too far, in allowing citizen suits to be taken against potentially liable parties outside of EPA Superfund activity.

Mr. LENT. Mr. Chairman, I yield 3 minutes and 15 seconds to the gentleman from Ohio [Mr. OXLEY].

(Mr. OXLEY asked and was given permission to revise and extend his remarks.)

Mr. OXLEY. I thank the gentleman.

Mr. Chairman, I rise in support of H.R. 2817, as amended. In general, I think it is an appropriate approach, and I commend all of those various committees working so diligently together on this piece of legislation. While I am not totally happy with the overall compromise bill, it appears to be a reasonable approach to reauthorizing the Superfund law. It contains strong but achievable cleanup standards and schedules and encourages settlements and therefore should expedite cleanup of hazardous waste sites. In general, it vastly improves the current inadequate and unworkable Superfund Program.

There are some areas, however, that I am concerned about, and I would like to point these out. First of all, the size and scope of the bill. As many of you know, the other body has approved a bill that has about $7.5 billion in size. We heard testimony early on in the Committee on Energy and Commerce indicating that the EPA felt that about a billion or a little over a billion dollars a year was more than adequate for their ability to deal with the cleanup procedures.

I hope, diligently and fervently hope, that our committee, and group of committees, have not created a $10 billion monster that we are going to have some difficulty feeding through the Ways and Means Committee and the various efforts they have come forth with to try to come up with the funding levels. In that area, Mr. Chairman, the use of the VAT or so-called SAT to specifically finance Superfund cleanup, in my estimation, opens the door to future dedicated taxes to finance a variety of national problems to be determined in the future, certainly a bad precedent to set in this body.

In the area of citizen suit provisions, again, I have some real concerns. I think most people are concerned today about the plethora of activities in courts and the amount of litigation that is going on. In my estimation, the citizen suit provision does nothing more than provide an open opportunity for suits at all levels, thereby in many cases bringing down the process. I am going to participate later in a colloquy with my friend from Texas, Representative FIELDS, in determining the extent of the language used in the legislation, particularly the imminent and substantial endangerment that is contained in the bill. In terms of amendments, there will be an amendment later offered by the gentleman from Massachusetts Mr. FRANK, that I have a great deal of difficulty with in the area of opening up a Federal cause of action for Superfund. It is my estimation that this amendment, if it goes hand in hand with the citizen suit provision, would provide some very, very difficult language for EPA and for everyone seriously concerned with dealing with this problem. It would tie their hands to the extent that the Superfund Program would be, in my estimation, unworkable or certainly not as effective as it could have well been.

So, in essence, we have come up with a good compromise, but there are some areas that still need some work, and I am looking forward to the consideration during the 5-minute rule to amend and to clean up this legislation.

Mr. STANGELAND. Mr. Chairman, will the gentleman yield?

Mr. OXLEY. I yield to the gentleman from Minnesota.

(Mr. STANGELAND asked and was given permission to revise and extend his remarks.)

Mr. STANGELAND. I thank the gentleman for yielding and commend him for his effort and his leadership in this matter.

Mr. Chairman, I rise in strong support of H.R. 3852 offered as an amendment in the nature of a substitute for H.R. 2817.

The compromise bill under consideration consists of a redraft of H.R. 2817, a bill which was originally referred jointly to the Committee on Energy and Commerce, Ways and Means, and Public Works and Transportation. After the bill was reported out by the Committee on Energy and Commerce, it was sequentially referred to the Committees on Merchant Marine and Fisheries and the Judiciary. The compromise bill, H.R. 3852, is the result of extensive negotiations between the various committees with jurisdiction over the bill—negotiations that have been difficult but, I believe, extremely productive.

Let me begin by expressing my deep appreciation to the leadership of the Committee on Public Works and Transportation for their efforts in developing not only the bill reported out of our committee, but more importantly, the amendments to Superfund which embody the compromise bill which has been developed. I believe our success in working with all of the other committees toward a resolution of our differences is due in large part to the hard work, openness and bipartisanship of Chairman JIM HOWARD and the ranking Republican member, GENE SNYDER, of the full Committee on Public Works and Transportation, and the Chairman of the Subcommittee on Water Resources, BOB ROE. I also want to take a moment to express my appreciation to the leadership of the Committee on Energy and Commerce and all of the other committees which have an interest in the reauthorization of Superfund. It would not be possible for us to be here today supporting a compromise bill if it has not been for the willingness of all parties involved in this process to negotiate in good faith on numerous controversial and deeply-held positions with respect to this legislation.

Mr. Chairman, this week the Environmental Protection Agency celebrates its fifteenth birthday. During those 15 years, this country has made tremendous strides in cleaning up our air and water through the operation of the Clean Air Act and the Federal Water Pollution Control Act. Despite our efforts under those two statutes, another form of pollution poses perhaps a more serious threat to our lives and our environment than the threat posed by regulated air emissions and water discharges. That threat is the threat of contamination from toxic chemicals and hazardous substances which have been dumped into and are contaminating our environment.

Although the issue of cleaning up abandoned hazardous waste sites was brought to the Nation's attention a little over 5 years ago, it is an issue which is likely to remain in the forefront of our concern for perhaps decades to come. The Superfund Cleanup Program is very much in its infancy, having as its origin the problem of toxic contamination at the Love Canal in upstate New York which captured our attention at the end of the last decade. Since then, EPA and the States have examined over 20,000 sites involving releases or potential releases of hazardous substances and have identified 850 of the Nation's worst dump sites requiring remedial action under Superfund. Unfortunately, during the first 5 years of the program, EPA has completed cleanup at only a handful of sites. While EPA is now accelerating their cleanup efforts, current estimates indicate that the cleanup program could involve as many as 10,000 sites, requiring upwards of $100 billion to complete.

With this background, it is understandable that many are dissatisfied with the level of effort that EPA has shown in the past in cleaning up toxic wastes. It is not

surprising. Therefore, that some of our colleagues have urged the adoption of very tough amendments to the Superfund law to ensure that the cleanup effort moves more quickly in the future. Others have noted with approval the significant strides that EPA has clearly demonstrated in the past few years in undertaking studies and cleanups at a much more aggressive pace than before. Recognizing this renewed commitment by EPA, many in Congress have urged that we give EPA all of the authority needed to address the problem without unnecessarily limiting their flexibility.

It has been said that the bills developed by the Committee on Energy and Commerce and the Committee on Public Works and Transportation represent these two divergent approaches to the problem. I, for one, have felt that while our bills contain a number of significant differences, they also contained fundamental similarities and that by building on our similarities and our common goals the two committees could develop a compromise position calling for tough new requirements while retaining the flexibility that the Agency needs to meet those requirements.

Allow me to briefly summarize some of the bill's major provisions as agreed to between the Committee on Energy and Commerce and the Committee on Public Works and Transportation and embodied in H.R. 3852.

The compromise vehicle would establish mandatory, legally enforceable cleanup schedules for the listing of future NPL sites and the commencement and completion of studies and remedial actions. The schedules have been carefully developed to spur EPA on to an accelerated cleanup effort based on a timetable that we believe EPA can meet. Under the schedules provided for in the bill, EPA would be required to list at least 1,600 sites on the national priorities list by January 1988, initiate 600 remedial investigation and feasibility studies (RI/FS) within 4 years at an annual rate that rises from 125 in the first year to 175 by the fourth year, and, to the maximum extent practicable, complete remedial action at all sites currently listed on the NPL within the next 5 years.

The compromise calls for mandatory cleanup standards designed to ensure use of legally applicable or relevant and appropriate Federal environmental standards to the extent that a cost-effective remedy is available to meet those standards. The standards would include those pertaining to the hazardous substances involved which have been developed under the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act. They would also include water quality criteria developed by EPA under the Federal Water Pollution Control Act. The State would be actively involved in the selection of the remedy. Where a State with an aggressive State cleanup progam, such as my State of Minnesota, has a tougher State standard, that tougher standard would be entitled to a presumption that it should be applied.

The compromise also addresses the central issue of how best to encourage cleanup settlements with private parties while, at the same time, ensuring adequate protection of the public interest. H.R. 3852 authorizes EPA to limit the liability of a private party who enters into an approved settlement, including limitations on future liability encompassing unknown conditions. Limits on liability would, however, be subject to stringent requirements including a requirement that, except for de minimis contributors, any limitation of liability for unknown conditions include either reopeners needed to protect the public interest from liability for unknown conditions or a requirement that the responsible party contribute to a contingency fund which would be used to respond to the unknown conditions for which liability would be limited.

The compromise bill calls for a comprehensive program for the cleanup of leaking underground storage tanks. The program is an expansion of a regulatory mechanism established for underground tanks in the amendments to the Resource Conservation and Recovery Act approved late last year. The bill would establish a six-tiered limitation of liability for any EPA or State cleanup costs based on the number of tanks at the facility and the assets of the company involved. The limits are established at levels of between $1 million and $50 million with an authority for EPA to establish lower limits through formal rulemaking.

H.R. 3852 establishes a comprehensive Emergency Response and Community Right-To-Know Program as a separate title under the bill. It is modeled upon legislation developed by Congressmen DEAN GALLO and BOB WISE, both members of the Committee on Public Works and Transportation. It calls for creation of State and local emergency response organizations, reporting requirements for those who handle hazardous chemicals and certain covered hazardous substances, and public access to information relevant to the impact of a company's handling of hazardous material upon the local community. One of the key provisions of this title is a requirement that EPA establish a program for reporting releases of extremely toxic substances. This is in response to the disaster in Bhopal, India, which happened just 1 year ago this Tuesday. EPA is also called upon to establish a pilot program to demonstrate whether we have the technology to inventory all hazardous substances which enter and leave the facilities selected for the program. The pilot program would be undertaken at 10 Federal facilities which are representative of facilities in the private sector.

Mr. Chairman, I believe that the compromise we have achieved represents a major improvement to the bill reported out by the Committees on Public Works and Energy and Commerce. The bill incorporates not only a synthesis of our separate vehicles, but also the recommendations we have received from the Committees on the Judiciary, Merchant Marine and Fisheries, Ways and Means, and other committees which did not request referrals but participated actively in the compromise's development.

It is my hope that we can act quickly and decisively in this body and proceed to an expeditious conference with the Senate. If we do so, I believe we can send a bill to the President before the end of the year. The compromise is the best way to achieve that, and it is a bill that I wholeheartedly endorse and recommend that my colleagues support.

Mr. LENT. Mr. Chairman, I yield 1 minute to the United States from Indiana [Mr. HILER].

(Mr. HILER asked and was given permission to revise and extend his remarks.)

Mr. HILER. I thank the gentleman for yielding time to me.

Mr. Chairman, today's debate on the reauthorization of the Superfund program hits very close to home for me.

I have several Superfund sites in my district and I would like to tell my colleagues the saga of one of them.

First discovered in April 1981, the contamination of Elkhart, IN's groundwater kicked off a convoluted chronology of action by Federal, State, and municipal health authorities to both locate the source and clean up the problem of tricholoethylene, commonly referred to as TCE, an industrial degreaser.

One of the actions that took place was in response to the discovery of TCE in individual wells. Last May, after several months of testing, it was determined that a significant number of homes on the eastern side of the city had wells which were contaminated with TCE. While in past years city water had been extended to some homes, most of the residents had continued to depend upon their individual wells as a source of drinking water, a source that now appears to be highly contaminated. My office joined with city, county, and State officials in requesting that an emergency response team from the Environmental Protection Agency come to Elkhart to investigate.

To the EPA's credit, action was fairly swift. As an interim measure, bottled water was provided to all residents with proven or suspected contaminated wells. Concurrently, the remedial action group studied the situation, and early this fall, with the urging of everyone concerned, the EPA announced plans to hookup all residents with affected wells to the municipal water supply while continuing to study and plan a long-term clean up effort.

While there is considerable debate in the Elkhart community as to the actions of EPA in prior years, once the EPA sent its emergency response team into Elkhart to investigate the contamination of individual wells, what followed was a reasonable example of how Superfund was designed to operate, with one major exception. During the period of time which elapsed between the emergency response team arriving in Elkhart at the end of May, and the announcement in October of the remedial action, many residents took it upon themselves to pay for connection to city water. In addition, the city of Elkhart extended many water mains to previously unserved areas. These actions were taken not only to protect the health of affected citizens, but also because the affected parties believed that Superfund would take care of them. Many of the individuals who took action believed that EPA officials had implied in public statements that "everything would be taken care of." However, as the current Superfund lesislation prohibits, by law, reimbursements for actions taken prior to the announcement by EPA of an approved remedial action, those people who took steps in good faith to protect their health are forced to bear the full financial burden of connecting to the city water supply. Those residents who either waited, or did not have access to a water line, in effect being rewarded through the assistance of the Superfund Program.

When Congress passed the original legislation, this ban on reimbursement for actions taken prior to specific approval by EPA was felt to be a necessity.

Without such a prohibition, the Superfund Program could be asked to pay for a multitude of activities which could sap the resources of the fund and misdirect the intent of the program. While in Elkhart the actions that individual citizens and the city took were actions that would have been approved under EPA's plan, I recognize and appreciate that EPA must have control of all expenditures to safeguard the fund. Only by explicitly authorized expenditures can the integrity of Superfund be maintained.

However, EPA should be directed to inform the citizens and community leaders in an affected area fully and accurately of the limitations of the Superfund Program as it pertains to reimbursements, and I believe that EPA's responsibility should be spelled out in the law. Only by explicitly informing citizens and community leaders of the limitations on Superfund reimbursements at the earliest possible time in EPA's involvement with a hazardous waste site, can we minimize the problem of non-EPA approved actions that took place in Elkhart as well as other communities.

I might add at this point that EPA itself believes it has a problem. In a memo dated November 25, 1985, from Henry L. Longest II, Director of the Office of Emergency and Remedial Response, to all Superfund branch chiefs, it was stated,

> In several communities, residents paid the costs for hooking-up their homes to the public water supply when local well water was found to be contaminated. Since this action was taken without prior EPA approval, the residents could not be reimbursed from the Fund, even though the actions taken were approved in the scope of work for that removal.
>
> To avoid such situations in the future, when a removal action that will affect private residences is approved, the OSC shall attempt to notify all residents involved that expenses incurred by residents are incurred at their risk and expense, and are not reimbursable by the Federal government. When time is sufficient for consideration of preauthorization requests, the OSC should advise residents of CERCLA and NCP provisions regarding private party reimbursement. Such notification might well involve printed statements that only preauthorized actions by private parties are eligible for reimbursement. Further, the OSC should be cautious in making statements that can be construed by community members as a promise by EPA to reimburse them for cleaning costs.

The Superfund Program, like every new effort, is plagued with certain unforeseen problems. The general intent of the program, to identify and correct hazards to our environment, is one which I, and certainly most everyone, endorses. As technology moves forward we are becoming cognizant of the detrimental effects many of our prior actions have had upon our environment. During this debate on reauthorization, we should strive to pass a bill which adheres to the original intent of the Superfund Program while correcting some of the imperfections in the process. As part of that corrective action, I firmly believe that the Environmental Protection Agency should be directed to more fully and accurately communicate the responsibilities and limitations of the Superfund Program to the local citizens and civic leaders in affected communities in order to avoid the unfortunate situation which was recently experienced in Elkhart, IN.

Mr. LENT. Mr. Chairman, I yield 4 minutes to the gentleman from Indiana [Mr. Coats].

Mr. COATS. I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in support of H.R. 2817, the Superfund Amendments of 1985. This bill will reauthorize and expand this country's Toxic Waste Cleanup Program. While this much needed and long-awaited proposal is far from a perfect measure, it goes a long way toward achieving our goal of cleaning up hazardous waste sites in this country.

We all recognize that there has not been enough action taken to address the cleanup of hazardous waste in the past. Our progress to date, in utilizing the original $1.6 billion fund, has fallen far short of our expectations. The Environmental Protection Agency [EPA], which oversees the Superfund law, has identified more than 22,000 potential hazardous waste sites, including more than 700 in my home State of Indiana. Nearly 800 of those sites have been included on the Superfund list of the Nation's worst sites, and emergency actions have been initiated at 469 sites. However, since the original Superfund law was written, we have learned the problem is far worse than originally thought.

The bill under discussion today is a compromise effort. Few, if any of us, are happy with all the provisions contained in this proposal. However, it is the product of literally hundreds of hours of negotiations, hearings, markups, input from various sources and the result is the best product, under the circumstances, the House has been able to devise to address the cleanup of abandoned hazardous wastes.

H.R. 2817 recognizes that the existing Superfund Program is not working well, and therefore, institutes a number of structural changes and improvements. We have been expending almost as much of our resources on litigation costs as we do on cleanup. There has been little encouragement for responsible parties to come forward and volunteer to clean up the waste sites they helped to create. However, the settlement procedures incorporated into this bill will help to take the toxic waste cleanup effort out of the courtrooms and to the abandoned waste sites where it belongs.

In addition to the settlement procedures, H.R. 2817 contains a number of strengthening measures. It guarantees protection of the public health and the environment by estblishing cleanup standards for each hazardous substance, pollutant or contaminant at each National Priorities List [NPL] site. But by the same token, it contains some waiver provisions that will provide the Administrator of EPA flexibility in certain circumstances as long as public health and the environment are ensured.

H.R. 2817 greatly accelerates the pace of the program by requiring EPA to start cleanup studies at 150 sites the first year, escalating to 200 sites per year by the third year following enactment. It also establishes a reasonable and acheiveable annual schedule for the start of cleanups; and if EPA cannot finish cleanup at all existing NPL sites within 5 years, EPA must publish an explanation of reasons.

This proposal also protects the public from the hazards of leaking underground storage tanks by giving EPA the money and authority to clean up petroleum releases, and it expands public health authorities by requiring the evaluation of health risks at each site.

Citizens are guaranteed information about the hazards associated with the chemicals produced, used, or stored in their communities, and this bill requires the development of emergency response programs that will ensure community protection from accidental catastrophic releases of hazardous substances.

H.R. 2817 provides far more protection against hazardous waste than any law has ever done before. This bill will go a long way toward achieving our goal of implementing an expedited and workable schedule of cleaning up the Nation's abandoned hazardous sites.

In the past, we have found ourselves in a politically divisive process that has resulted in no real progress in addressing this critical national problem. It is incumbent upon each and every member in this legislative body to assure that we adopt a bill that will actually bring about meaningful, effective and efficient cleanup of our Nation's abandoned hazardous waste sites. The consensus building that has gone into H.R. 2817 provides a compromise for reauthorizing Superfund. I intend to support H.R. 2817 and urge my colleagues to support this measure as well.

Mr. LENT. Mr. Chairman, I yield 3 minutes to the gentleman from Wisconsin [Mr. PETRI]

Mr. PETRI. I thank the gentleman for yielding time to me.

Mr. Chairman, it is good that the House is taking action on Superfund. Many people had given up hope that this legislation would be considered before we adjourned for the recess. Cleaning up the Nation's toxic waste sites should be a top priority. This threat to our environment and to the public health must be reduced and if possible be eliminated.

As a member of both the Education and Labor and the Public Works and Transportation Committees, I am particularly interested in commenting on one section of the legislation before us today.

Section 128 of H.R. 2817 directs the Secretary of Labor to promulgate regulations under the OSHA statute related to the exposure of workers at hazardous waste sites.

While I believe that workers ought to be protected by safety regulation, I have two specific areas of concern: One is that section 128 amends the OSHA statute by extending its jurisdiction to cover local and State workers. No hearings have been held on this issue and I believe we ought to make this kind of amendment through the statutory rather than the regulatory process. The potential financial impact on all levels of local government deserves full consideration, quite apart from the Superfund legislation.

Second, I am concerned about the specificity of the language governing the regulations.

For example, the Secretary of Labor is directed to establish maximum levels of exposure to hazardous wastes. Such a requirement is unworkable because we simply do not know what levels of exposure to certain toxics are harmful. We ought to be considering how best to protect workers from various levels of exposure and we should be monitoring the degree of exposure to toxics.

When the other body considered Superfund, one Member was going to offer a separate amendment which contained the language of section 128 in the bill before us. All interested parties held informal discussions about the issues I have outlined. I call my colleagues' attention to the generalized language that was ultimately adopted by the other body. Not only does this language not extend the jurisdiction of OSHA without due process, it also allows OSHA the latitude to promulgate the most appropriate regulations.

Apart from these concerns, I would like to commend the leadership of both the Public Works and the Energy and Commerce Committees for achieving a workable compromise on this legislation.

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Mr. ECKART of Ohio. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. Fazio), who was very instrumental in working out the Federal facilities provisions in the compromise.

(Mr. FAZIO asked and was given permission to revise and extend his remarks.)

Mr. FAZIO. Mr. Chairman, I rise today in strong support of the compromise Superfund reauthorization bill. It establishes the essential elements of a strong Superfund Program, one that seeks to address this critical problem in a comprehensive fashion. The bill will ensure the cleanup of at least 600 hazardous waste dumps across the country and sharply reduce the current risk to the environment and public health posed by these sites.

In California, toxics have contaminated the drinking water supplies of an estimated 4 million people, and that number is growing. From the small individuals wells near one of the several Superfund sites in Sacramento to whole municipal water systems that supply drinking water to hundreds of thousands of people living near the Stringfellow acid pits, more and more Californians are being threatened by toxics seeping into the ground water.

The health care implications of such contamination are enormous. For example, a University of California public health physician estimates that 6 percent of all cancer deaths in the State—2,700 deaths a year—are related to toxic chemical exposure.

And toxic contamination represents one of the most potent threats to the long-term vitality of the American economy. The damage to natural resources and the high cost of cleaning up these sites represents an incalculable economic loss.

In the San Francisco Bay, the example, high concentrations of toxic pollutants have been found in fisheries and are at least partially to blame for the huge declines in fish populations. The decline in striped bass alone is costing the State's fishing industry $32 billion a year. And studies show that if fishermen were able to once again harvest shell fish from the bay, another $50 million a year industry could be supported.

There are currently 90 California sites on EPA Superfund list. None, however, have been completely cleaned up since the Federal law was enacted in 1980. And the cleanup has only begun at a handful of these dumps, while more and more sites are being discovered nearly every week.

Again, Mr. Chairman, the compromise Superfund bill is a strong proposal that will ensure that the legacy of inaction in Superfund is not repeated over the next 5 years.

Mr. Chairman, I commend all of the Members who worked so hard over the last several months to bring this compromise Superfund bill to the floor today. Mr. Chairman, I would particularly like to acknowledge and thank Chairman Dingell, Chairman Howard, Chairman Florio, and Chairman Roe for their support and guidance is developing section 213 of title II of the bill which reflects the basic provisions of H.R. 1940, the Defense Environmental Restoration Act of 1985, which I introduced, earlier this year. Without their strong support and interest our success here today would not have been possible.

Mr. Chairman, I would also like to commend the chairman of the House Armed Services Committee, Mr. ASPIN, who earlier this year established the House Armed Services Task Force on Environmental Restoration to investigate the military toxic waste problem and develop recommendations to improve the cleanup effort. The task force, under the strong and able leadership of Mr. MCCURDY, worked tirelessly to fashion the soundest and most workable approach to this enormous problem. The members of the task force, Mr. MCCURDY, and their staffs played an invaluable role in perfecting the Defense Environmental Restoration Act, and I thank them.

Briefly, Mr. Chairman, the Federal facilities section of title I combined with section 213 of title II, which again reflects the provisions of H.R. 1940, proposes significant changes in the procedures, pace, and scope of the existing Department of Defense Environmental Restoration Program.

These provisions will bring to an end the double standard that has existed over the last 5 years with respect to the application of CERCLA to Federal facility cleanups. No longer will less be expected of Federal agencies, and the Defense Department in particular, than is expected of private entities. This compromise Superfund reaffirms that we have one set of environmental laws and that they apply to everyone equally. Whether they are the largest Federal agency or the smallest corporation, the laws should be applied in the same manner and with the same commitment to protecting the public health and environment. This bill ensures that that will occur.

One of the most important accomplishments of the bill is that it will speed the cleanup of military toxic waste dumps. Congressional investigations have identified the cumbersome DOD funding process as a major obstacle to an accelerated cleanup effort. The bill tears down these needless bureaucratic hurdles and establishes a centralized account to finance all aspects of the DOD cleanup program, including military construction.

The bill also restores EPA authority to oversee DOD cleanups. Unlike other Federal agencies and private entities, DOD has over the last 5 years overseen its own toxic waste cleanup program. This bill will restore EPA authority to select the final cleanup action at all DOD sites on the national priorities list and thus provide the public with additional assurances that the public health and environment are protected.

In addition, the bill requires EPA and the Agency for Toxic Substances and Disease Registry to generate health risk assessment data and toxicological profiles on the contaminants most commonly found at DOD hazardous waste sites. Such studies will help ensure that these sites are cleaned up fully and completely to protect the long-term health of the public.

The bill also requires greater DOD coordination with Federal, State, and local health and environmental authorities. The military is mandated to coordinate all aspects of the cleanup program—from the identification of any possible contamination to the details of the final, permanent cleanup phase. To assist in this effort, DOD is mandated to establish technical review committees or task forces made up of representatives of the military, EPA, local citizens, and State and local regulatory agencies to monitor DOD cleanup plans at each of its facilities.

And, the bill requires DOD, as well as other Federal agencies and private entities, to meet any and all State cleanup standards for pollutants or contaminants which are more protective of the public health or environment than the applicable Federal standard.

This latter provision, which is found in section 121 of title I represents a fair and reasonable approach to one of the most controversial issues—that of State permits and standards—which faced the negotiators on the bill. I applaud the Energy and Commerce Committee and the Public Works Committee as well as the Armed Services Task Force, which made an important contribution to developing this compromise, for their efforts to ensure meaningful State participation in the development and execution of all response actions. While technical amendments may still be offered to this section that are worthy of the Members careful consideration, this compromise represents a sound and fair approach to this complicated problem.

Mr. Chairman, the public is demanding that we take action to clean up the poisons that threaten the environment and the health and welfare of generations of Americans. We must act. Each day we delay the pollutants sink lower into our soil, each day our rivers, streams, and bays are becoming more foul with toxic waste. This bill must pass.

Again, Mr. Chairman, I commend all the Members who helped fashion this proposal and urge its adoption.

Mr. LENT. Mr. Chairman, by previous agreement, I yield 5 minutes of my remaining time to the gentleman from Ohio [Mr. ECKART] so that he may further distribute the time.

Mr. ECKART of Ohio. I thank my friend for his courtesy.

The CHAIRMAN. The gentleman from Ohio [Mr. ECKART] now has 13 minutes remaining.

Mr. ECKART of Ohio. Mr. Chairman, I yield 2 of those minutes to my colleague, the gentleman from Texas [Mr. RALPH M. HALL].

(Mr. RALPH M. HALL asked and was given permission to revise and extend his remarks.)

Mr. RALPH M. HALL. Mr. Chairman, I rise in support of the compromise bill that has been introduced by my colleague and distinguished majority leader, the gentleman from Texas [Mr. WRIGHT], and the distinguished minority leader, the gentleman from Illinois [Mr. MICHEL].

Now, the bill before us today is the end result of what I consider one of the most difficult debates that I have participated in since I have been here, and I think it is a true compromise in every sense of the word. I do not really believe that there is a Member in this body who is enthusiastic about all of its provisions.

I want to commend my chairman, the gentleman from Michigan [Mr. DINGELL], for his continuing efforts to report a bill from the Committee on Energy and Commerce and to reach a reasonable resolution of the outstanding issues among the other committees of jurisdiction. And, of course, I thank the chairman of the subcommittee, the gentleman from New Jersey [Mr. FLORIO], for the kindness he extended during consideration of this bill, and my colleague, the gentleman from Ohio [Mr. ECKART], for his ushering the bill through the Committee on Energy and Commerce and, hopefully, successfully ushering the bill to its completion.

Mr. Chairman, I want to turn now, briefly, to the financing portion of the bill. Title V of the bill, of course, represents what we consider a true compromise on the source of the funding, but it will still result in a substantial proportion of the funding coming from two States, Texas and Louisiana.

Under the compromise, we are willing to accept a disproportionate part, but the magnitude of the program is such that we cannot accept it all. The broad-based tax provision represents an effort to spread the burden more equitably.

While not a perfect alternative, a broad-based manufacturing excise tax is the best we could find, since it puts a portion of the burden on manufacturing industries that either use chemicals or products made from chemicals, or have benefited from past economic expansions and lower waste disposal costs.

Our colleaagues in the other body looked at this issue closely and came to the conclusion that the broad-based tax was the best alternative. If we were to adopt the Downey amendment, I believe we might create a situation that might be unresolvable in the conference with the result that we would have to produce a new bill next year. That would be a tragedy for the country that desperately needs the certainty of an ongoing program to continue the cleanup process.

Mr. Chairman, I urge the Members to support the bill and oppose the Downey amendment.

Mr. ECKART of Ohio. Mr. Chairman, I yield 2 minutes to the gentleman from Louisiana [Mr. TAUZIN], a member of the Committee on Energy and Commerce.

Mr. TAUZIN. I thank the gentleman for yielding.

Mr. Chairman and Members of the Committee, there are really three things wrong with the current law that has failed us miserably. The first is that the current law does not provide enough money to do the job. We have only collected $1.6 billion and, unfortunately, spent it, which is the second problem, in courts in litigation rather than cleaning up sites. EPA claims that only six sites have been cleaned up. We have learned that really only 5 were cleaned up, when they predicted that 150 would be cleaned up in the last 5 years.

The law has failed us in that regard. Not enough money, too much time spent in court, not enough cleaning up the waste sites around the country.

And the last thing that was wrong

with the current law is that it taxed the wrong people. There are 12 companies right now paying 70 percent of the $1.6 billion collected in the last 5 years. Twelve companies paying 70 percent. And they have been cited as responsible parties at Superfund sites only 1 percent of the time.

Now, Ways and Means Committee and the other committees, Energy and Commerce, all of us who have worked on this bill, have tried to cure those 3 problems: First, to provide a bill that will really clean up sites; second, to provide enough money to do the job, $10 billion; and, third, Ways and Means has given us a formula that will tax the real polluters.

EPA has identified 4,000 potential contributors to hazardous waste sites around this country, 4,000. Of the 4,000, 87 percent are not taxed under the current law but will be taxed under the Ways and Means formula.

Do not let my friends from New York fool you. The provisions of the tax-raising mechanism provided by the Ways and Means goes after the real polluters. The current bill misses them badly. The current bill provides for a tax on the wrong parties. If we adopt the Ways and Means Committee revenue-raising mechanism, we will finally be asking those who have contributed to those sites to pay a fair share of cleaning them up.

In Springfellow alone, in California, we found out that the 25 biggest contributors to the site there are not currently being taxed. Is it not time we taxed the real polluters?

I commend this bill to you as Ways and Means and Energy and Commerce, and others, bring it to you, a good bill.

Mr. LENT. Mr. Chairman, I take great pleasure in yielding 5 minutes to the gentleman from Illinois [Mr. MICHEL], the distinguished minority leader of the House of Representatives.

Mr. MICHEL. I thank the gentleman for yielding time to me.

Mr. Chairman, as the Members know, I have joined with the majority leader in cosponsoring this compromise version of the Superfund bill, and I urge its adoption.

The bill obviously is not fully to my liking, as I'm sure is the case with most of the members of this body. The tax section, in particular, represents an area where many of us will be voting for an approach other than that approved by the Ways and Means Committee.

Taxes not withstanding, however, the bill represents a reasonable compromise, worked out by both Republicans and Democrats from the two committees primarily involved with the structuring of the Superfund Program, Energy and Commerce and Public Works.

The important thing for us to do is to move this legislation through so that we can achieve final enactment this year. I regret that it's taken so long to bring it to the floor. The Senate completed action in September. The Energy and Commerce Committee reported the bill in July, and the Public Works Committee marked it up in October.

A month ago I wrote the Speaker urging expedited procedures in order to bring the bill to the floor before Thanksgiving.

I am including that letter in the RECORD at this point:

OFFICE OF THE REPUBLICAN LEADER,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, November 6, 1985.
Hon. THOMAS P. O'NEILL, JR.,
Speaker, U.S. House of Representatives,
H-204, The Capitol, Washington, DC.

DEAR MR. SPEAKER: I am writing to express my extreme concern and disappointment in the lack of progress being made in the House to reauthorize the Superfund program. The Superfund program was enacted in 1980 to provide the necessary resources to begin the cleanup of our nation's worst abandoned hazardous waste sites. At the time of its enactment in 1980, a 5-year funding mechanism was put into place to generate $1.5 billion to aid in this cleanup effort.

Recognizing that the funding for this critically important environmental program was expiring this year, efforts were undertaken in both bodies early in the session to reauthorize the program. The Senate completed its consideration of Superfund in September before the funding authority for this program expired. The Senate bill, S. 51, has been at the Speaker's desk since that time.

Regrettably the process has broken down in the House. Although the Energy and Commerce, Merchant Marine and Fisheries, Judiciary, and Ways and Means Committees have all completed work on this legislation, the bill continues to languish in the Public Works and Transportation Committee. This despite a representation by Chairman Roe on October 1, in response to a question by Mr. Lott concerning legislation to extend the existing Superfund tax authority for 45 days, that the Public Works Committee at that time had completed 95% of its work on Superfund and that it would mark up the bill by October 11. (The Public Works Committee did complete mark-up on October 10, but has yet to file its report.)

As you will recall, Trent Lott engaged several Chairmen of the relevant Committees in a colloquy as to the need for the 45 day extension and when the Membership of the House could expect to see H.R. 2817 on the Floor. It was represented at that time, in response to Mr. Lott's questions, that you had indicated in a Democratic Leadership meeting earlier that day that it was your intention to move H.R. 2817 as speedily as possible.

It has been over a month since funding for Superfund has expired, and over a month since the colloquy I have referenced took place. EPA Administrator Lee Thomas has been compelled to slow down cleanup efforts under the Superfund program at over 57 hazardous waste sites. All interested parties have testified in support of increased funding in order to proceed with this essential cleanup effort. The three Committees to which H.R. 2817 has been referred have recommended over a six-fold increase in the funding levels for this program, from $1.5 billion to $10 billion. Needed changes to the 1980 law remain unmade despite the clear recognition on the part of all that the Superfund statute is in need of significant revision.

Under the circumstances, further delay in consideration of H.R. 2817, which has been ordered reported to the House by all of the Committees to which it was referred, is simply unacceptable. If the Public Works Committee cannot file its report on this legislation by the end of this week, I would urge you to discharge that Committee from further consideration of the bill. Assuming that Committee can meet this deadline, I believe one week should be set aside in order to allow the Energy and Commerce and Public Works Committees to meet in an effort to work out a compromise between the two Committee versions.

Whether or not this compromise can be achieved, I believe the Rules Committee should meet the week of November 18 to report a rule to the House that would govern consideration of H.R. 2817. The House would then be in a position to act on H.R. 2817 before the Thanksgiving recess.

In order to establish this type of schedule, I would urge you to chair a meeting later this week of the following Members: Messrs. Wright, Foley, Dingell, Howard, Michel, Lott, Broyhill, and Snyder. Only through your leadership in the establishment of this type of schedule can we assure our colleagues and the American people that the House of Representatives is serious about addressing this major environmental issue this year. To do any less would be an abdication of our responsibility.

I look forward to working with you in making sure that the House is able to pass a comprehensive Superfund reauthorization bill in the next few weeks.

Sincerely,

ROBERT H. MICHEL,
Republican Leader,
U.S. House of Representatives.

I never did hear back from the Speaker, and of course Thanksgiving is now past and we have only a week to go before the projected adjournment.

Such delays put into jeopardy the prospects of finalizing action on Superfund this year. It is essential that we enact the bill this year, because without authorization and without adequate funding, EPA cannot effectively move ahead with the cleanup of the many hazardous waste sites.

Some amendments will be offered today which, if enacted, will have the effect of slowing the process down even further. I would hope those would be rejected. The bill before us is a reasonable and balanced approach. Any effort to turn this program into a slush fund for the legal profession or to hamstring the ability of the EPA Administrator to effectively carry out the cleanup program will only serve to undermine the prospects for early enactment of this legislation.

The bill represents a carefully negotiated compromise that should be enacted essentially as is without further delay.

Mr. ECKART of Ohio. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts [Mr. MARKEY], one of our subcommittee chairmen from the Committee on Energy and Commerce.

Mr. MARKEY. Mr. Chairman, I want to begin by first complimenting the gentleman who recognized me, the gentleman from Ohio [Mr. ECKART], the chairman of our full committee, the gentleman from Michigan [Mr. DINGELL], the gentleman from New Jersey [Mr. ROE], the gentleman from New Jersey [Mr. HOWARD], and especially the original father of Superfund, the gentleman from New Jersey [Mr. FLORIO], for the long and hard and tough battle he has engaged in in bringing the bill to this point, and to all of the Members here who have worked on this issue.

The compromise which has been produced I think is a satisfactory one. It is not an ideal one, but I think it is one that substantially advances from where we have been on this issue over the past 5 years.

When we first passed this bill 5 years ago, there was an identified crisis in this country and one that Congress took a long time in coming to the point where we finally dealt with it, but we passed a piece of legislation. Unfortunately, over that 5-year period, very little was done to implement it at the EPA. My district is a classic example. Woburn, MA, along with Love Canal and two or three other sites in this country, have been given the most attention nationally by "60 Minutes" and every other national network. I have the fifth worst site in the country.

□ 1725

It has been identified for 5 years. There have been leukemia and cancer deaths far above the national average in children and adults all across this city. They have yet to turn the first shovel of dirt on the fifth worst site in the United States 5 years into the job.

This bill provides standards. This bill provides deadlines. This bill restricts the flexibility which EPA will have in order to allow them to continue to delay so that the fifth worst site in the country takes 10 years to clean up as a message, as a window into seeing what will happen to the 500th or 5,000th worst site in the country. Probably never or indefinitely before it would be reached.

This is an important piece of legislation. It puts teeth and additional money and more manpower into an agency which up until now has not been able, either by design or by lack of resources to be able to get the job done. But now, with this bill, we finally have reached the point where we have been identified and given the resources to begin to really get this job done.

Mr. ECKART of Ohio. Mr. Chairman, I yield 2 minutes to the gentleman from Washington [Mr. SWIFT].

(Mr. SWIFT asked and was given permission to revise and extend his remarks.)

Mr. SWIFT. I thank the gentleman for yielding me this time.

Mr. Chairman, I think one of the most important sections of this bill with regard to the local communities' ability to deal with health problems is the community right-to-know provisions. Various chemical and other industries have, I think, a legitimate right to protect trade secrets, but the legislation was somewhat unclear as to what was a trade secret. This legislation lays out carefully what the parameters are. It is not just a case of anyone being able to assert that there is a trade secret. There are specific provisions which must be met so that it in fact is a legitimate trade secret.

Even so, the bill provides means by which those authorities in a community that would need to know in order to be able to deal with the communities' health do have availability to them of information about chemicals and other hazardous substances that are available in their community. Essentially, it says that health professionals will have this information if they need it for diagnosis or treatment. It essentially says those people who have to deal with medical emergencies can get that information. In certain instances, types of research that have to be done can have, to the researchers, information made available so that they can do that adequately.

It provides, of course, that those officials who have this information agree that the information will be kept confidential in order to protect legitimate trade secrets. But the diagnosis, treatment, medical emergencies, and appropriate research that needs to be done in communities can all be done in spite of a trade secret being applicable. This we think is a very balanced and useful goal between the rights of entrepreneurs and the rights of the community to know what is going on in its community, and the ability of the health professionals in that community to be able to see that they are taking care of the health and safety of all of the citizens.

This is one good part of a bill that contains many good provisions, and I would certainly urge all of my colleagues to support the excellent compromise that has been worked out here over the last few weeks.

Mr. MAVROULES. Mr. Chairman, the issue we are addressing today involves our future, our children's future, and the future of our country as does no other bill in Congress. The clean up of toxic waste is a No. 1 priority for us, since it involves the health and safety of our people and our environment. I am very pleased to have this opportunity to voice my support for the Superfund proposal before us today. A lot of hard work went into this legislation, and I give credit to the committee members and their staffs for the fine work they have turned out. They were able to set their priorities and stick by them.

With three sites on the National Priority List in my district, I am extremely concerned that we pass a strong, effective, and environmentally stringent Superfund bill. For this reason, I strongly support H.R. 2817.

Mr. Chairman, our greatest concern, of course, is to make sure that the cleanup gets done. We must begin the cleanup process in at least 100 sites each year. Also, within the next few years, all of the Nation's 20,000 hazardous waste sites, whether or not they are currently endangering anyone, must be investigated. The mandatory schedules set by H.R. 2817 would establish such priorities and deadlines, and thus ensure immediate action toward a cleaner environment. Along with establishing schedules, we must set strict standards. I am pleased to see that the Clean Water Act is included in H.R. 2817 as a basis for cleanup.

Many of my constituents back home have been adamant on their right to know what hazardous wastes are being generated in their backyards. The community right-to-know provision of H.R. 2817 addresses this concern. The community spirit is very strong in my district. Those communities are very aware of what is going on around them and care about improving their health and safety. The citizen suit provision of H.R. 2817 gives these communities and individual citizens a way to protect themselves from environmental law violators and from EPA inaction.

Mr. Chairman, I think the last word is that we must pay the piper. In a society as industrialized as ours, where we have so many comforts and conveniences that we take for granted, we must realize that there is a price to pay. We must pay that price now if we hope to leave behind a country in which our children and grandchildren can live. Once we have passed this Superfund bill and the cleanup of our toxic waste sites is underway, we can dream of a future without the threat of hazardous wastes, a future of responsible use of nature's resources, a future for mankind.

Mr. LEHMAN of California. Mr. Chairman, in 1980, the Nation was shocked to learn of the environmental disaster at Love Canal. This was assumed to be an isolated and manageable incident; however, today we know of tens of thousands of such sites with identical potential for disaster across the Nation. Millions of metric tons of hazardous wastes are contaminating our water, our air, and our land, and pose the No. 1 environmental health threat facing our Nation today.

In response to the Love Canal incident, Congress enacted the Superfund Program to clean up the waste sites across the country. Of great concern to me, however, is the fact that Federal waste facilities have been entirely exempt from the provisions of this bill. The Defense Department has been left to its own devices to clean up its 800 hazardous waste sites, 39 of which have been labeled at the country's worst hazardous waste sites. This allowing of the Defense Department to take care of its own problems might have seemed like a good idea to avoid extra layers of bureaucracy in the cleanup effort. The Pentagon's efforts, however, have been wrought with delays, ineffectiveness, and outright errors.

I am pleased that the Superfund reauthorization bill being considered on the House floor today firnally addresses the issue of military waste facilities. The measure includes the provisions of H.R. 1910, the Defense Environmental Restoration Act of 1985, of wich I am a cosponsor. These provisions will set up a centralized account to finance the military cleanup program; require DOD to coordinate its cleanup plans with all Federal, State, and local health and environmental regulatory authorities; authorize a full-scale research, development, and demonstration program to identify new, cost-effective cleanup technologies; and require DOD to involve the affected communities in the cleanup process. Most importantly, this measure will require EPA to select the final remedial action at all DOD sites on EPA's national priority list.

These provisions represent a major step forward to clean up hazardous waste dumps on our Nation's military bases and do away with a dangerous double standard. With the Superfund bill being considered on the floor today, we establish one set of hazardous waste cleanup laws that apply equally to everyone, military and nonmilitary alike. I support the efforts made in today's Superfund reauthorization bill.

Mr. MINETA. Mr. Chairman, I rise in strong and enthusiastic support for this legislation, the reauthorization and renewal of the Superfund law.

We have been struggling with this bill for some time, as Members know all too well, and I congratulate all of my colleagues whose hard work has brought us to this point.

The bill before us today is a good bill, and we must pass it. The people of this Nation, who confront the awful reality of toxic waste every day, know how important this bill is. We must act with firmness and with speed.

I would like to mention a few provisions of this bill that I am particularly concerned about.

There is a provision in this bill that instructs the Environmental Protection Agency to give high priority to those sites which have led to the contamination of drinking water supplies. I first authored this provision in last year's bill, and am delighted to have this provision included again in this year's bill.

I am also pleased to see a provision to expand and target the work of the Agency for Toxic Substances and Disease Registry. With the provisions of this bill, ATSDR will be able to carry out its longstanding mandate to provide the health effects studies that are so central to an active Superfund program.

This bill also includes a requirement that EPA initiate cleanups at 600 sites over the next 5 years. I know that there are many provisions which can be described as the heart of Superfund, and certainly the 600-site requirement is one such provision. What good does it do us to have a complex costly program if we do not mandate actual cleanups?

I know some believe that we do not need to impose such detailed requirements upon EPA, and that we should leave such matters as schedules to administrative discretion.

I strongly disagree with that view. We want these sites cleaned up; we know they must be cleaned up. Let us at least have the good sense to be explicit about what we want the administration to do. We know what leaving these matters to broad administrative discretion has gotten us in the past. Only a handful of sites have been listed as clean, and now even those are leaking again.

We will have a long debate today. I hope we will not be deterred, and will approve this bill. Several amendments to strengthen these provisions will be offered, and I urge my colleagues to support those as well.

Again, I congratulate everyone whose efforts have brought us to this point, and urge passage of the strongest possible bill.

Thank you.

Mr. DASCHLE Mr. Chairman, today the House begins consideration on Superfund amendments. Without question, this is the most important environmental legislation to be addressed in the 99th Congress and it deserves the strong support of my colleagues.

The cleanup of hazardous waste in America should be a top national priority. We must take steps to ensure that our land, our water, and our air are made clean and safe for ourselves and our children. The extension and improvement of Superfund is a major contribution toward doing so.

The Superfund amendments being considered on the House floor today are the result of weeks and months of negotiation and contain the valuable input of many different interested parties. I believe that the program provisions included in the compromise version are a very good beginning toward a strong and effective Superfund. Cleanup schedules and standards, as well as important citizen rights and community right-to-know clauses are, for the most part, already well-established in the Superfund package. I would, however, urge my colleagues to consider seriously the addition of further strengthening amendments.

Finally, with respect to the means of financing the Superfund program, I urge my fellow Members to support the Downey-Frenzel amendment, which I believe best matches responsibility for cleanup with the parties most responsible for pollution. This amendment retains the policy that the polluter, not the general public, pays the largest share of fiinancing the solution.

Again, Mr. Chairman, I would like to reaffirm my strong support for the goals of an effective and evironmentally sound Superfund.

Mr. WOLPE. Mr. Chairman, it is with great pleasure that I rise today in support of this well-crafted compromise for the reauthorization of the Superfund. From the striking drawing that appeared on the cover of Time magazine to the indepth analysis of the Office of Technology Assessment, it has been made abundantly clear that we are facing a toxics crisis which is truly alarming. In the last 5 years, we have become increasingly aware of the enormous number of the hazardous waste sites that threaten public health. According to the Office of Technology Assessment, there could be as many as 10,000 dumps in need of cleanup across the Nation. Furthermore, it is increasingly clear that these sites will be much more difficult to effectively cleanup than was originally anticipated. The recent recurrence of problems at the Butler Mine Tunnel site in Pennsylvania is an unfortunate example of this problem and underlines the importance of physically destroying or deactivating waste instead of simply moving it from one location to another. In this regard, I applaud the research provision in this bill which is designed to encourage the development of innovative new technologies that will provide permanent solutions to the various problems present at toxic waste sites.

As a Representative from the State of Michigan, I am particularly concerned about the magnitude of the toxics crisis. With 64 sites currently on the national priorities list, we rank second in Superfund sites nationwide. In addition, we are currently saddled with a number of extremely complex problems which the present Superfund Program is not adequately equipped to address. For example, the Environmental Protection Agency is considering simply writing off a Charlevoix, MI, aquifer that has been contaminated by cancer causing organic chemcials because they feel it would simply be too costly to clean up. By ignoring the problem the EPA is not only forcing Charlevoix to abandon its municipal water supplies, but also allowing the lethal contaminants to drain into Lake Michigan.

My experience in my own district, where contamination was discovered in a public well system, has been more positive, however. It indicates that, with the proper resources and guidelines—and a little prodding—EPA is capable of effectively addressing these difficult situations. I am convinced that the bill before us today will create a program that provides the Agency with the means to make such successful cleanup activities the rule and not the exception.

Specifically, the reauthorization creates strong requirements for permanent cleanups which incorporate the important standards Congress has worked so hard to create in other Federal environmental laws. The bill addresses the backlog of sites in need of clean up by putting EPA on a strict schedule which requires the Agency to start "substantial and continuous physical onsite" cleanups at approximately 125 sites in 1986 and a total of some 600 sites within 5 years. Another provision that will be very important to Michigan in the coming years is the new program to address leaking underground storage tanks which contribute substantially to the current ground water crisis in Michigan.

In short, this proposal for a $10 billion Superfund, with significant programmatic improvements over the previous authorization, is an essential and positive step in our attempt to address the toxics crisis. I applaud the extensive committee efforts in producing this reauthorization and urge all my colleagues to support it.

Mr. BROWN of California. Mr. Chairman, I would like to take this opportunity to praise everyone who has had a part in bringing this bill to the floor today to reauthorize Superfund. This compromise is the result of a great deal of work by many people, and contains many of the best aspects of the many versions reported by the many committees who had jurisdiction. But, as is the case with any compromise, important aspects have been left out and inappropriate parts included. It does, however, address the issues that most people assume critical to assuring that hazardous waste sites are cleaned in an effective and responsive manner. It also assures that citizens may act to bring about action, and it will provide information to citizens about potential risks to health from chemicals. Chairmen DINGELL, HOWARD, and ROE are to be commended for seeing that this compromise was reached, permitting us to proceed with toxic waste cleanup.

As is true with any legislation, however, our responsibility does not end with enactment, leaving responsibility to the appropriate agency. This lesson has been bitterly brought home to me with regard to the Stringfellow acid pits, located in my district. I have for the past 13 years grappled with this site, including delays in action, mismanagement and intrusion of political factors into the decisionmaking.

Stringfellow today, after 5 years as a priority Superfund site, remains health threat to thousands of residents in my district. Toxic ground water from the site today flows beneath an elementary school attended by hundreds of students and beneath many homes, including some that are being sold to people who will only later learn of the full threat of this site. The remedial investigation/feasibility study, mandated by Superfund, is today running at three to four times the cost of the original contract and will not be completed until at least a year after the original completion date. I have little reason to believe that this study will not again recommend containment as a preferred alternative rather than waste treatment—the only means by which we can be assured that Stringfellow will no longer threaten the health of the people of my district.

I am encouraged that the bill before us addresses the issue of cleanup schedules. I must point out, however, that without the goodwill of the Environmental Protection Agency [EPA], we may find that, as has been the case in California, simple, easy-to-clean sites will take priority over such sites as Stringfellow, which are complex, difficult to understand and will require major expenditures for final cleanup. I am encouraged, too, that this bill contains cleanup standards. Again though, I must point-out that without the goodwill of EPA, standards may be mainpulated, ignored or waived such that public health may still be endangered.

The best part of this bill for my constituents is that it augments the funds available for cleanup. The threat posed by Stringfellow alone will probably cost at least $100 million to remedy. The funds made available by this bill may make it possible for EPA to do the necessary work at this site. I must remind by colleagues, however, that money alone will not solve the threat of Stringfellow or any other waste site. If EPA is permitted to approve and implement another containment strategy at the site, the residents of my district may expect their ground water and their health to continue to be threatened. And, though we do not typically have hurricanes in California, such as the one that opened the Butler Tunnel in Pennsylvania, we do have occasional heavy rains, floods, and earthquakes that could again send toxic chemicals down the streets- and through the yards and homes of nearby residents.

I appreciate all the work that has gone into drafting this legislation. It is a significant improvement over the old Superfund bill and earlier draft versions. I, however, intend to remain skeptical and vigilant, and I encourage my colleagues with waste sites in their districts, who are, by the way, the majority of my colleagues, to do the same. Thank you.

Mr. FAUNTROY. Mr. Chairman, I rise in support of H.R. 2817, the Superfund Amendments of 1985, which would reauthorize the Superfund Program for 5 years providing $10 billion through fiscal year 1990. This legislation establishes mandatory cleanup schedules and requires the EPA to begin actual cleanup at roughly 600 sites over the 5-year period. This bill would, for the first time, require that cleanup at Superfund sites meet statutory standards. H.R. 2817 will also require that following cleanup, sites must meet the standards established by existing Federal law, such as the Clean Water Act.

This legislation would work to protect our citizens and communities. Citizens would be given the right to sue polluters when release of a hazardous substance from waste disposal facilities represents an imminent and substantial danger to public health and the environment. I strongly support the right of citizens to sue polluters and support this provision. I also urge my colleagues to support a strengthening amendment to be offered by our distinguished colleague, Congressman BARNEY, FRANK, That would allow persons to sue in Federal court for injuries caused by toxic substances.

Communities located in proximity to chemical plants and hazardous waste sites and facilities would be given the right to know what chemicals are being handled or stored in those facilities. Companies would be under the obligation to provide information to help communities respond to emergencies caused by the sudden release of toxic chemicals, including information on emissions of acutely toxic chemicals. H.R. 2817 also authorizes a new program to clean up leaking underground petroleum storage tanks.

Mr. Chairman, the presence of an estimated 10,000 toxic waste sites in the neighborhoods of America represents a clear and present danger to all Americans. While the problem of toxic waste sites presents a clear and present danger, it also presents an opportunity to engage in united action and coalition building with all the peoples of our Nation—blacks, whites, Native Americans, Latinos, and Asian Americans, rich and poor alike in defending against the health threatening existence of toxic and hazardous wastes. The Superfund amendments, H.R. 2817, is an instructive example of legislation which is in the common interest and around which we should all unite.

In order to raise the funds necessary for H.R. 2817, I would urge support of an amendment to be offered by our colleagues, Congressmen TOM DOWNEY and BILL FRENZEL. This amendment, in the nature of a substitute to H.R. 2817's taxing provision, would not include a broad based excise tax which would shift the burden of financing Superfund away from those industries generating products and wastes found at abandoned sites on to low-income consumers and companies which have little if any culpability in generating toxic and hazardous wastes and the creation of dangerous sites.

The tax burden for financing Superfund should adhere to the principle that those responsible for pollution should pay for its cleanup. The oil and chemical industries are responsible for the generation of most toxic wastes. The Environmental Protection Agency reports that 93 percent of all hazardous wastes generated in the United States emanate from the chemical, oil, and metal related industries. Indeed, when Congress first enacted the Superfund Program, and when we in this body voted to reauthorize the program last year, we imposed a tax on oil and chemical companies because they were most responsbile for the toxic waste problem.

The amendment proposes to raise funds for Superfund from the following sources:

Two billion dollars from chemical feedstock taxes, $500 million more than the bill. The amendment contains the same list of chemicals that would be taxed that are in the bill and the same exemptions, but establishes a higher tax rate.

The sum of $3.1 billion from an 11.9-cent-per-barrel tax on crude oil, $2.1 billion more than would be raised by the bill's 3.85-cent-per-barrel tax.

Two billion dollars from a waste-end tax similar to the $1.5 billion waste-end tax established by the bill. The amendment and the bill would implement the tax in the same way, but the amendment's waste-end tax has a higher tax rate for land dispos-

al—$35 per ton in 1986 increasing to $45 per ton in 1990, instead of $27 per ton in 1986, and $3 per ton in 1987 throug 1990 as in the bill.

A greater reliance on general revenues—$1.6 billion from general revenues, compared to the bill's $180 million.

Sixty-seven million dollars from imported chemical derivatives, the same as the bill; $850 million in gasoline taxes to finance the leaking underground storage tank cleanup program, the same as the bill; and $400 million in interest.

Mr. Chairman, I believe that this is the most equitable way to finance the Superfund Program.

I would urge my colleagues to support the two amendments offered by Congressman FRANK and by Congressmen DOWNEY and FRENZEL and to adopt H.R. 2817 for it is clearly in our national interest.

Mr. EDGAR. Mr. Chairman, I am very pleased that the House is being presented a compromise Superfund bill that preserves many of the crucial elements of the strong legislation passed overwhelmingly by the House last year. This bill, together with the adoption of strengthening amendments offered by myself and other Members will provide a much more aggressive and effective Superfund cleanup program than the inadequate program we have today.

I am proud to have had the opportunity to work with the members of the Public Works and Transportation Committee on which I serve which endorsed an excellent bill. This bill provided the momentum that made the development of the bill we are voting on today possible.

However, the commitment of many Members not on the Public Works Committee to strong Superfund legislation was an important factor in the development of the compromise bill, as well. I would like to pay special recongition to those Members who signed a letter coauthoried by Mr. WIRTH and myself to the Speaker and the minority leader expressing that commitment. The signers of the enclosed letter were willing to demonstrate their commitment at a point during the develoment of the legislation that provided important leadership and helped assure that the bill presented to the House for approval would be a strong one.

HOUSE OF REPRESENTATIVES,
Washington, DC, December 4, 1985.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker, U.S. House of Representatives, The Capitol, Washington, DC.

Hon. ROBERT H. MICHEL,
Minority Leader, U.S. House of Representatives, The Capitol, Washington, DC.

DEAR MR. SPEAKER AND MINORITY LEADER: Legislation to extend and expand the Superfund program is the most important environmental bill to come before the Congress this year. This legislation will determine for millions of Americans how quickly toxic waste sites in their neighborhoods will be cleaned up.

Nearly all the Committees have completed their consideration, and the bill will soon be ready to go to the House floor. We are writing to inform you of our concern that this legislation, at a minimum, contain provisions which will provide some hope to Americans that we are serious about the problems of toxic waste. While we hope that the House will pass a stronger bill, the following are the areas that we believe are the minimum requirements for a credible Superfund bill:

Cleanup schedules. The legislation must establish an annual schedule of cleanups that EPA must begin. Over the last five years EPA has managed to clean up only five sites, a miserable record. The version of the bill reported by the Public Works Committee contains an annual, enforceable schedule and requires that EPA clean up the sites on its National Priorities List within five years, or provide the public with an explanation why this goal has not been met.

Cleanup standards. The bill must establish uniform, national standards for cleanup so that when EPA acts all will have confidence that the toxic wastes are indeed cleaned up. It should also require EPA to treat wastes permanently whenever feasible so we will not be merely moving wastes from one leaking landfill to another. The Public Works version of the bill contains provisions which deal with these issues.

Citizens Suits. Citizens should have the right to sue companies to stop pollution if EPA and the states are not acting to clean up a toxic site and the site presents an imminent and substantial endangerment to public health. The legislation reported by the Judiciary Committee contains this provision

Liability. The bill should maintain polluters' liability for future cleanup and their responsibility for present problems. Liability is the most effective tool that EPA has for bringing the responsible parties to the bargaining table to negotiate a cleanup agreement. The Public Works version of the bill contains these provisions.

Health Effects Studies. The bill should guarantee citizens the right to information about the effects on their health of exposure to toxic wastes. The Energy and Commerce version of the bill contains this provision.

Community Right-To-Know. The legislation should give to citizens the right to know about the use and discharge of toxic chemicals within their community and set local standards for disclosure. The Public Works version of the bill takes an important step in this direction, but its version of the bill should be strengthened by giving EPA a specific list of chemicals, including those with chronic and acute health hazards, as part of the inventory of covered chemicals.

Leaking Underground Gasoline Storage Tanks. The legislation should provide funding for the cleanup of leaking underground gasoline storage tanks and impose liability on those responsible for such leaks. The Public Works version of the bill contains this provision.

Last year the House passed a bill by an overwhelming margin of 323-33 which provided for a strong Superfund cleanup program. It is our hope that we will do no less this year, and the provisions mentioned above are the minimum to accomplish that goal.

We believe most strongly that the provisions listed above are a minimum for acceptable House Superfund legislation. We urge your support for a strong Superfund bill.

Sincerely,

Garv L. Ackerman, Daniel K. Akaka, Les Aspin, Chester G. Atkins, Les AuCoin, Michael D. Barnes, Jim Bates, Berkley W. Bedell, Charles E. Bennett, Howard L. Berman, Mario Biaggi, Sherwood L. Boehlert, William H. Boner, Robert A. Borski, Douglas H. Bosco, Frederick C. Boucher, Barbara Boxer, George E. Brown, Jr., Terry L. Bruce, Sala Burton, Albert G. Bustamante, Thomas R. Carper, William Clay, Cardiss Collins, Silvio O. Conte, John Conners, Jr.

Jim Cooper, Lawrence Coughlin, Thomas A. Daschle, Robert W. Davis, Ronald V. Dellums, Norman D. Dicks, Julian C. Dixon, Brian J. Donnelly Byron Dorgan, Thomas J. Downey, Richard J. Durbin, Bernard J. Dwyer, Mervyn M. Dymally, Robert W. Edgar, Don Edwards, Ben Erdreich, Lane Evans, Dante B Fascell, Walter E. Fauntroy, Vic Fazio, Edward F. Feighan, Hamilton Fish, Jr., Wyche Fowler, Jr., Barney Frank, Robert Garcia, Samuel Gejdenson.

Benjamin A. Gilman, S. William Green, Frank J. Guarini, Lee H. Hamilton, Augustus F. Hawkins, Charles Hayes, Carroll Hubbard, Jr., William J. Hughes, Andrew Jacobs, Jr., James M. Jeffords, Paul E. Kanjorski, Marcy Kaptur, Robert W. Kastenmeier, Barbara B. Kennelly, Peter H. Kostmayer, Tom Lantos, Richard H. Lehman, William Lehman, Mel Levine, Cathy Long, Mike Lowry, Stanley Lundine, Edward J. Markey, Robert T. Matsui, Nicholas Mavroules, Frank McCloskey.

Joseph M. McDade, Matthew F. McHugh, John R. McKernan, Jr., Stewart B. McKinney, Dan Mica, Barbara A. Mikulski, George Miller, Norman Y. Mineta Parren J. Mitchell, Jim Moody, Bruce A. Morrison, Robert J. Mrazek, Stephen L. Neal, Bill Nelson, Henry Nowak, James L. Oberstar, David R. Obey, Major R. Owens, Leon E. Panetta, Donald J. Pease, Timothy J. Penny, Charles B. Rangel, Bill Richardson, Tommy Robinson, Edward R. Roybal, Martin Olav Sabo. Gus Savage, H. James Saxton, James H. Scheuer, Claudine Schneider, Charles E. Schumer, Gerry Sikorski, Lawrence J. Smith, Christopher H. Smith, Olympia J. Snowe, Stephen J. Solarz, John M. Spratt, Jr., Fernand J. St Germain, Richard Stallings, Fortney H. Stark, Louis Stokes, Gerry E. Studds, Robin Tallon, Esteban Edward Torres, Robert G. Torricelli, Edolphus Towns, James A. Traficant, Jr., Morris K. Udall, Bruce F. Vento, Peter J. Visclosky, Doug Walgren, James H. Weaver, Ted Weiss, Charles Wilson, Timothy E. Wirth, Sidney R. Yates, Gus Yatron.

Mr. WYDEN. Mr. Chairman, I rise in strong support of the compromise legislation we have before us. It is the product of long, hard negotiations among several committees and it is a product we can be proud of.

The reason all of us have worked so hard on this legislation is because the current Superfund, while certainly a fund, definitely has not been super. We can do better. We must do better. And clearly, the legislation before us today will do better.

One of the reasons it will do better is that it squarely addresses what we now know about toxic wastes that we did not know 5 years ago. It puts the heat on EPA in areas where EPA needs a fire lit under it. It provides EPA flexibility in the areas where it has demonstrated it needs some flexibility. In response to several disastrous chemical leaks at home and abroad, this legislation includes a strong community-right-to-know law that will ensure local communities are not taken by surprise in time of an industrial emergency and that emergency response is swift and effective.

Moreover, just as this legislation addresses problems we were fully aware of 5 years ago, it also recognizes there is much more we need to learn about cleaning up toxic wastes and protecting human health and the environment. Specifically, this compromise includes a provision that could do more to protect human health and the environment in the future than any other feature of this bill.

The provision is based upon an amendment I offered during Energy and Commerce Committee consideration of the Superfund amendments. This provision establishes a 5-year research and training program funded out of the Superfund. It is designed to increase our knowledge on the health effects of hazardous substances, how to assess, detect and evaluate these health affects, how to detect hazardous substances in the environment, methods to reduce the toxicity of hazardous substances, innovative cleanup technologies and improved safety practices in handling hazardous substances.

The funding is relatively modest—approximately 2 percent of the Superfund—yet we stand to gain so much by spending so little. There is exciting research being conducted in our labs—for example, the development through biotechnology of microorganisms that can actually devour toxic waste—and this program will ensure that such valuable research continues and grows.

This provision also builds upon concepts contributed by Mr. TORRICELLI and the Science and Technology Committee and Mr. STENHOLM and the Small Business Committee designed to provide a greater opportunity for EPA to text new cleanup technologies. Specifically, a new Office of Demonstration is established at EPA, which will have responsibility for testing new cleanup technologies that EPA will be able to use at sites in the future.

We have heard from many entrepreneurs who have developed unique cleanup technologies but cannot get EPA to use them on real live toxic waste sites. This program will make sure these entrepreneurs are provided the opportunity to show their technology can work. Only in this way will America's entrepreneurs take the risks to develop technologies we must have to rid the Nation of abandoned toxic waste sites in the future.

Right now, these technologies are not being developed because EPA has been reluctant to test and use new technologies. Why should an inventor spend money inventing something if EPA's track record shows that it is not willing to test new technologies? It is a chicken and egg situation, and what we have tried to do in this provision is create an egg that will produce the chicken we want—in this case, technologies that will permanently clean up toxic wastes.

While this provision has not received the attention other provisions of the compromise have received, it is a vitally important provision that has the potential to create quantum leaps in our knowledge of the key Superfund issue: protecting human health and the environment by eliminating the hazards caused by abandoned toxic waste sites.

In conclusion, in addition, to the gentleman from New Jersey [Mr. TORICELLI] and the gentleman from Texas [Mr. STENHOLM], I want to thank Chairman DINGELL, Mr. COEHLO, Mr. ANDREWS, and Mr. SUNDQUIST for their input on this provision. It is a stronger and more comprehensive provision because of their contributions.

Mr. TRAFICANT. Mr. Chairman, today the House considers H.R. 2817, to reauthorize the Superfund for hazardous waste site cleanup. As a member of the Public Works and Transportation Committee I was glad to have the opportunity to play an active role in forging a strong Superfund bill, one that will protect the health of the general public, our environment, and the rights of citizens and communities.

Overall, I am strongly supportive of the compromise bill we are considering today. It retains many of the provisions of the Public Works and Transportation Committee version—provisions I feel are vitally important. One of the more important provisions in the compromise bill would require minimum annual schedules for the initiation of remedial investigation and feasibility studies and cleanup construction. This provision is vitually important because it would require EPA to actually begin cleanup of hazardous waste sites starting in fiscal year 1986, to total 600 cleanup construction starts by fiscal year 1990. This will ensure that our most pressing hazardous waste sites are cleaned expeditiously.

Another provision, to require minimum cleanup standards that meet the standards and criteria of other Federal laws and require the use of permanent technologies where they are feasible and achievable, will ensure that these cleanups are done in accordance with strict environmental laws and standards.

This bill also will allow citizens to sue responsible parties for the abatement of an imminent hazard at a hazardous waste disposal site where EPA is taking no action. This provision is important because it will give individuals and communities the legal right to protect themselves and their communities in instances where EPA has not taken action or has been lax in its duties.

Most importantly, the compromise bill would establish a community-right-to-know provision that requires reporting of the use or storage of acutely hazardous chemicals identified by EPA and reporting of emissions to the environment for some acutely hazardous chemicals. I think the grave tragedy in Bhopal, India, underscores the urgent need for this important provision. Communities have a right to know not only what chemicals are being produced and stored by a local chemical plant, but they also have a right to know what the hazards are of those chemicals, and at what levels those chemicals are being emitted into the environment.

This bill would also restrict EPA's ability to grant releases of liability for unknown hazards until after the completion of remedial action. This provision will ensure that if a liable party can be found, that the polluter is made liable for the cost of the cleanup action.

The State of Ohio has very strict standards relating to the cleanup of hazardous waste sites. During consideration of this bill by the Public Works and Transportation Committee, I worked hard to ensure that State standards would be applied in cleanup actions and that States had the opportunity to participate in the remedy selection process, including an opportunity to review and comment on each proposed remedial action and to consult with the Administrator concerning each proposed action. I am pleased to see that the compromise bill includes language that presumes that State standards apply in all cases. The EPA Administrator can waive State standards only under the following conditions: First, when the State has agreed with the decision of the Administrator not to apply the State standard; second, when the remedial action selected by EPA provides protection of public health and the environment equivalent to that provided under the State standards; third, when the Administrator determines that the State has not consistently applied the State standard under similar circumstances at other hazardous waste sites; and fourth, when the Administrator determines that cleanup based on the States standard would upset the balance of the Superfund (so-called fund balancing requirements).

Mr. Chairman, I have no objections to the first three waiver provisions, however, I strongly object to the fourth waiver provision, the so-called fund balancing requirement. Mr. MARKEY, my esteemed colleague from Massachusetts, has offered an amendment that I strongly support. I feel is very important in addressing the inequity and grave problems associated with this particular waiver provision.

The whole concept of fund balancing was designed as an attempt to allow the Administrator to deploy limited resources. I do not deny or oppose the necessity of this concept when Federal funds have to be used in a cleanup action. But I see no reason why fund balancing requirements should apply in private party cleanups. If a responsible party can be found, then that responsible party should have to pay 100 percent of the cost of the cleanup, and that cleanup should be based on the strictest standards. State standards should never be waived in private party actions based upon fund balancing requirements. I fear that without passage of the Markey amendment cleanup actions will be delayed and the safety of the general public and the environment will be compromised because many sites will not be completely cleaned up—even though there is a responsible party. Polluters should pay the entire cost of cleaning the mess they created and the grave hazards they caused. Again, keep in mind that the Markey amendment preserves fund balancing for the Federal fund—but it eliminates fund balancing as a way of protecting private responsible parties.

Other amendments to the legislation I support are the Wirth amendment to require onsite Superfund cleanup actions to conform with applicable State laws governing the location of hazardous waste sites; and the Atkins amendment to establish a new category of Superfund sites—interim sites—similar to provisions in the Public Works version, which I strongly supported. The Wirth amendment would prevent the placement of a new hazardous waste facility at the site location of an existing dump site cleaned up under Superfund if State laws prohibit putting a hazardous waste facility at that location. This amendment would preserve the important right of States to enforce their own laws relative to environmental and public safety. The Atkins amendment would ensure that at sites where a permanent cleanup could not be accomplished, those sites be placed on an interim list. Every 5 years for the next 15 years, EPA would be required to revisit those sites to ensure that hazardous wastes were not escaping and to determine, on an individual basis, if a permanent remedy had become available. Mr. Chairman, this amendment is extremely important because it would ensure that those sites that are not completely cleaned are simply taken off the national priorities list and forgotten about. This amendment would serve to minimize the threat posed by partially cleaned hazardous waste sites and would ensure that those sites are eventually completely cleaned where possible and feasible.

I would also like to urge my colleagues to support action to strengthen community-right-to-know language in the bill to prevent unfair blanket exemption from such reporting requirements. Where feasible and possible, communities should have access to all information regarding what chemicals are being produced, stored, and emitted into the environment—and they should be informed of the hazards of such chemicals. Chemical companies should also be required to work the local community on emergency response and evacuation procedures.

In closing, Mr. Chairman, I want to remind my colleagues of the enormous threat to the environment, public health, and our natural resources posed by hazardous waste. Enactment of the compromise version of H.R. 2817 along with the strengthening amendments I have outlined, will be a significant and important step forward in addressing the disturbing threat and growing problem. I urge all of my colleagues to support this bill.

Mr. LENT. Mr. Chairman, I have no further requests for time and I yield back the balance of my time.

Mr. ECKART of Ohio. Mr. Chairman, I have no further requests for time and I yield back the balance of my time.

Mr. HOWARD. Mr. Chairman, I have no further requests for time and I yield back the balance of my time.

The CHAIRMAN. All time having expired, pursuant to House Resolution 331, the text of H.R. 3852 is considered by titles as an original bill for the purpose of amendment under the 5-minute rule in lieu of the amendments recommended by the Committees on Energy and Commerce, Ways and Means, the Judiciary, Merchant Marine and Fisheries, and Public Works and Transportation, and each title is considered as having been read.

No amendment which changes title V of said substitute or which is otherwise within the jurisdiction of the Committee on Ways and Means under clause 1(v)(1) or (3) of rule X is in order except those specified below. It is in order to consider the following amendments, in the following order only, to title V, which shall not be subject to amendment and amendments numbered (1) and (2) shall be debatable for 1 hour equally divided and controlled by the proponent and a Member opposed thereto: (1) the amendment printed in the CONGRESSIONAL RECORD of December 4, 1985, by, and if offered by, Representative DUNCAN or his designee; (2) the amendment printed in the CONGRESSIONAL RECORD of December 4, 1985, by, and if offered by, Representative DOWNEY or his designee; and (3) amendments recommended by the Committee on Ways and Means if neither of the amendments designated (1) and (2) has been adopted.

The Clerk will designate section 1.

The text of section 1 is as follows:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Superfund Amendments of 1985".

TABLE OF CONTENTS

Sec. 1. Short title and table of contents.
Sec. 2. CERCLA and Administrator.
Sec. 3. Limitation on contract and borrowing authority.

TITLE I—PROVISIONS RELATING PRIMARILY TO RESPONSE AND LIABILITY

Sec. 101. Amendments to CERCLA definitions.
Sec. 102. Reportable quantities.
Sec. 103. Notices; penalties.
Sec. 104. Response authorities.
Sec. 105. National contingency plan.
Sec. 106. Abatement actions.
Sec. 107. Liability.
Sec. 108. Financial responsibility.
Sec. 109. Penalties.
Sec. 110. Section 110.
Sec. 111. Uses of Fund.
Sec. 112. Claims procedure.
Sec. 113. Litigation, jurisdiction, and venue.
Sec. 114. Relationship to other law.
Sec. 115. Delegation of functions.
Sec. 116. Public health assessment and protection authorities.
Sec. 117. Public participation.
Sec. 118. Miscellaneous provisions.
Sec. 119. Response action contractors.
Sec. 120. Federal facilities.
Sec. 121. Cleanup standards.
Sec. 122. Settlements.
Sec. 123. Reimbursement to local governments.
Sec. 124. Landfill gas operators.
Sec. 125. Section 3001(b)(3)(A)(i) waste.
Sec. 126. Worker protection standards.
Sec. 127. Liability limits for ocean incineration vessels.

TITLE II—MISCELLANEOUS PROVISIONS

Sec. 201. Post closure.
Sec. 202. Transportation of hazardous materials.
Sec. 203. State procedural reform.
Sec. 204. Conforming amendment to funding provisions.
Sec. 205. Cleanup of petroleum from leaking underground storage tanks.
Sec. 206. Citizens suits.
Sec. 207. Indian tribes.
Sec. 208. Commencement of drilling fluids, etc., study.
Sec. 209. Insurability study.
Sec. 210. Pollution liability insurance.
Sec. 211. Releases associated with brine disposal.
Sec. 212. Research, development, and demonstration.
Sec. 213. Department of Defense Environmental Restoration Program.
Sec. 214. Oversight and reporting requirements.
Sec. 215. Radon gas.

TITLE III—EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

SUBTITLE A—Emergency Planning

Sec. 301. Establishment of State commissions and local committees.
Sec. 302. Comprehensive emergency response plans.

SUBTITLE B—Notification Requirements

Sec. 311. Basic notification requirements.

Sec. 312. Public availability of plans, data sheets, reports, status sheets, and emergency bulletins.
Sec. 313. Provision of information to health professionals, doctors, and nurses.
Sec. 314. Hazardous substance emergency notice and bulletin.

SUBTITLE C—General Provisions

Sec. 321. State and local law.
Sec. 322. Trade secrets.
Sec. 323. Enforcement.
Sec. 324. Exemption.
Sec. 325. Emergency training and pilot program.
Sec. 326. Definitions.

TITLE IV—COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION

Sec. 400. Short title.

Subtitle A—Oil Pollution Liability and Compensation

Sec. 401. Definitions.
Sec. 402. Coordination with international conventions.
Sec. 403. Damages and claimants.
Sec. 404. Liability.
Sec. 405. Financial responsibility.
Sec. 406. Designation and advertisement.
Sec. 407. Claims settlement.
Sec. 408. Subrogation.
Sec. 409. Jurisdiction and venue.
Sec. 410. Relationship to other law.
Sec. 411. Penalties.
Sec. 412. Authorization of appropriations.

Subtitle B—Marine Oil Pollution Compensation Fund

Sec. 421. Marine Oil Pollution Compensation Fund.
Sec. 422. Premiums.
Sec. 423. Limitation on Fund's liability.
Sec. 424. Services and facilities of other agencies.
Sec. 425. Penalty for failure to pay premium.
Sec. 426. Coordination with other provisions of this title.
Sec. 427. Definitions and special rules.

Subtitle C—Regulations, Effective Dates, and Savings Provisions

Sec. 441. Effective dates.
Sec. 442. Conforming amendments.
Sec. 443. Regulations.
Sec. 444. Separability.

Subtitle D—Implementation of Conventions

Sec. 461. Recognition of the International Fund.
Sec. 462. Service of process and intervention.
Sec. 463. Exemption from taxation.
Sec. 464. Payment of contributions.
Sec. 465. Jurisdiction of district courts.
Sec. 466. Recognition of judgments.
Sec. 467. Financial responsibility.
Sec. 468. Civil penalty.
Sec. 469. Waiver of sovereign immunity.
Sec. 470. Rules and regulations.
Sec. 471. Definitions.

TITLE V—AMENDMENTS OF THE INTERNAL REVENUE CODE OF 1954

Sec. 501. Short title; table of contents.

PART I—SUPERFUND AND ITS REVENUE SOURCES

Sec. 511. Extension of environmental taxes.
Sec. 512. Increase in tax on petroleum.
Sec. 513. Increase in tax on certain chemicals.
Sec. 514. Repeal of post-closure tax and trust fund.
Sec. 515. Waste management tax.
Sec. 516. Tax on certain imported substances derived from taxable chemicals.
Sec. 517. Imposition of superfund excise tax.
Sec. 518. Hazardous Substance Superfund.

PART II—LEAKING UNDERGROUND STORAGE TANK TRUST FUND AND ITS REVENUE SOURCES

Sec. 521. Additional tax on gasoline, diesel fuel, and special motor fuels.
Sec. 522. Leaking Underground Storage Tank Trust Fund.

PART III—OIL SPILL LIABILITY TRUST FUND AND ITS REVENUE SOURCES

Sec. 531. Increase in environmental tax on petroleum.
Sec. 532. Oil Spill Liability Trust Fund.

PART IV—STUDIES

Sec. 551. Study of impact of waste management tax on domestic manufacturers.
Sec. 552. Study of lead poisoning.

PART V—COORDINATION WITH OTHER PROVISIONS OF THIS ACT

Sec. 551. Coordination.

The CHAIRMAN. Are there any amendments to section 1?

AMENDMENTS OFFERED BY MR. HOWARD

Mr. HOWARD. Mr. Chairman, I have a series of technical amendments that I offer jointly with the Committee on Commerce and Energy.

Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The Clerk read as follows:

Technical amendments offered by Mr. HOWARD: Page 6, after line 20, insert the following:

(f) FEDERALLY LICENSED DAMS.—Section 101(a)(20) of CERCLA is amended by adding the following at the end thereof:

"(D) in the case of a hazardous substance, pollutant, or contaminant which—

"(i) has been released into the environment upstream of a dam which is licensed under part 1 of the Federal Power Act; and

"(ii) has subsequently come to be located in the reservoir created by such dam;

the term 'owner or operator' does not include the owner or operator of the dam, unless such owner or operator is a person who would otherwise be liable for such release or threatened release under section 107;

Redesignate the subsequent subsections of section 101 of the bill accordingly.

Page 7, after line 17, insert the following new subsection:

(e) STATE.—Section 101(a)(27) of CERCLA is amended by inserting before the semicolon at the end thereof the following: "; the term 'State' as used in sections 107(a)(4)(A) and 107(f) does not include a municipality or other political subdivision of a State".

Page 7, line 18, strike out "(e)" and insert in lieu thereof "(f)".

Page 45, line 11, strike out the quotation marks and last period, and add the following after line 11:

"(c) AWARDS.—The Administrator of the Environmental Protection Agency may pay an award of up to $10,000 to any individual who provides information leading to the arrest and conviction of any person for a violation subject to a criminal penalty under this Act, including any violation under section 103 and under this section. The Administrator shall by regulation prescribe criteria for such an award and may pay any award under this subsection from the Fund, as provided in section 111.".

Page 48, line 4, strike out "and";

Page 48, line 8, strike out the quotation marks and each period and substitute "; and"; and

Page 48, after line 8, add the following:

"(13) the costs of any awards granted under section 109(c).".

Page 53, after line 25, insert the following new subsection:

(k) CERTAIN NOTIFICATION PROCEDURES.—Section 111 of CERCLA is amended by inserting after subsection (o) the following new subsection:

"(p) NOTIFICATION PROCEDURES FOR LIMITATIONS ON CERTAIN PAYMENTS.—Not later than 90 days after the date of the enactment of this subsection the Administrator shall develop and implement procedures to adequately notify, as soon as practicable after a site is included on the National Priorities List, concerned local and State officials and other concerned persons of limitations, set forth in subsection (a)(2) of this section, on the payment of claims for necessary response costs incurred with respect to such site.".

Page 147, line 25, strike out "involving" and insert in lieu thereof the following: "which involves treatment of".

Page 149, line 20, strike out the quotation marks and the final period.

Page 149, after line 20, insert:

"(m) PERMITS FOR ONSITE CLEANUP UNDER STATE AUTHORITY.—In the case of remedial actions specifically involving mobile incinerator units in a State which has specifically authorized the use of such units (as of the date of enactment of this section), if such remedial actions are undertaken by the State under the authority of a State Superfund law or equivalent authority, the State may waive any permit requirement under subtitle C of the Solid Waste Disposal Act which would be otherwise applicable to such action to the extent that the following conditions are met:

"(1) The State files notice with the Administrator of its intention to waive the permit requirement of and the Administrator does not object to such waiver within 120 days.

"(2) The incinerator does not involve the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to an offsite facility.

"(3) The remedial action provides each of the following:

"(A) changes in the character or composition of the hazardous substance or pollutant or contaminant concerned so that it no longer presents a risk to public health.

"(4) Protection against accidental emissions during operation.

"(5) Protection of public health considering the multimedia impacts of the treatment process.

"(6) The State provides procedures for public participation regarding the response action which are at least equivalent to the level of public participation procedures applicable under this Act and under the Solid Waste Disposal Act.

The waiver of any permit requirement under tis subsection shall not be construed to waive any standard or level of control which is applicable to any hazardous substance or pollutant or contaminant involved in the remedial action involved and which would otherwise be contained in the permit. Such waiver of any permit requirement under subtitle C of the Solid Waste Disposal Act shall only apply to the extent that the facility or remedial action involves the onsite treatment with a mobile incineration unit of waste present at such site. The waiver shall not apply to any other regulated or potentially regulated activity, including the use of the mobile incineration unit for actions not authorized by the State. The authority of this subsection shall terminate at the end of three years unless the State shall demonstrate, to the satisfaction of the Administrator, that the operation of mobile incinerators in the State has sufficiently protected public health and the environment and is consistent with the criteria required for a permit under subtitle C of the Solid Waste Disposal Act.".

Page 150, line 8, insert after the period the following: "As a matter of public policy the Administrator is encouraged to facilitate agreements under this Act that are in the public interest and consistent with the National Contingency Plan in order to expedite effective site cleanups and minimize litigation.".

Page 155, strike out lines 14 through 16 and insert in lieu thereof the following:

"(B) To the extent such information is available, the volume and nature of substances contributed by each potentially responsible person identified at the facility.

Page 208, line 20, strike out "to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the Indian tribe." and inset in lieu thereof the following: "for specific enforcement of the terms of the contract or to recover any funds paid under the contract in an amount not to exceed the costs incurred by the Administrator because of the breach of the contract by the Indian tribe.".

Page 210, insert after line 20 the following (and redesignate subsection (f) as subsection (i)):

"(f) COMMUNITY RELOCATION.—Should the Administrator determine that proper remedial action is the permanent relocation of tribal members away from a contaminated site because it is cost effective and necessary to protect their health and welfare, such finding must be concurred in by the affected tribal government before relocation shall occur. The Administrator, in cooperation with the Secretary of the Interior, shall also assure that all benefits of the relocation program are provided to the affected tribe and that alternative land of equivalent value is available and satisfactory to the tribe. Any lands acquired for relocation of tribal members shall be held in trust by the United States for the benefit of the tribe.

"(g) STUDY.—The Administrator of his agent shall conduct a survey, in consultation with the Indian tribes, to determine the extent of hazardous waste sites on Indian lands. Such survey shall be included within a report which shall make recommendations on the program needs of tribes under this Act, with partricular emphasis on how tribal participation in the administration of such programs can be maximized. Such report shall be submitted to Congress along with the President's budget request for fiscal year 1988.

"(h) LIMITATION.—Notwithstanding any other provsion of this Act, no action under this Act by an Indian tribe shall be barred until the later of—

"(1) the applicable period of limitations has expired, or

"(2) two years after the United States, in its capacity as trustee for the tribe, given written notice to the governing body of the tribe that it will not present a claim or commence an action on behalf of the tribe or fails to present a claim or commence an action within the time limitations specified in this Act.

Page 209, after line 25, add the following: "No liability to an Indian tribe shall be imposed under secton 107(a) where the damages to natural resources complained of were the result identified in section 107(b).".

Page 215, line 22, strike out "and the District of Columbia." and insert thereof the following:

, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

In section 214(a) of the bill (relating to radon gas)—

(1) Strike out "and" at the end of paragraph (2);

(2) Strike out the period at the end of paragraph (3) and insert in lieu thereof "; and"; and

(3) Insert after paragraph (3) the following:

(4) determine methods of reducing or eliminating the threat to human health of radon gas and radon daughters.

Page 339, strike out lines 22 and 23 and insert in lieu thereof the following:

(5) the payment of costs and expenses of administration of this title, but only to the extent that the costs and expenses are necessary for and incidental to the implementation of this title; and

Page 125, after line 4, insert:

"(1) SEPARATE CATEGORY ON NPL.—Whenever a permanent solution has not been selected according to the requirements of subsections (a) and (b) with respect to a release at any site or facility, the site or facility shall be placed in a separate category on the National Priorities List labelled 'Interim Category'.

Page 125, line 5, strike out "(1)" and substitute "(2)".

Page 125, line 18, strike out "(2)" and insert in lieu thereof "(3)".

Page 126, line 1, strike out "(3)" and substitute "(4)".

Page 126, line 9, strike out "(4)" and substitute "(5)".

Page 125, line 9, after the period insert: "The review of each site or facility in the Interim Category on the National Priorities List shall be no less frequent than every 5 years following placement in such category.".

Page 99, line 20, after the period insert closing quotation marks and another period.

Page 99, strike out line 21 and all that follows through line 8 on page 100 and insert in lieu thereof the following:

(b) REMOVAL AND TEMPORARY STORAGE OF CONTAINERS OF RADON CONTAMINATED SOIL.—Not later than 90 days after the date of the enactment of this Act, the Administrator shall make a grant of $7,500,000 to the State of New Jersey for transportation from residential areas in the State of New Jersey and temporary storage of approximately 14,000 containers of radon contaminated soil which is the subject of a remedial action for which a remedial investigation and feasibility study has been initiated before such date. Such containers shall be transported to and temporarily stored at any site in the State of New Jersey designated by the Governor of such State. For purposes of section 111(a) of CERCLA, the grant under this subsection for transportation and storage of such containers shall be treated as payment of governmental response cost incurred pursuant to section 104 of CERCLA.

Page 100, line 9, strike out "(b)" and insert in lieu thereof "(c)".

Page 101, line 1, strike out "(c)" and insert in lieu thereof "(d)".

Page 102, line 1, strike out "(d)" and insert in lieu thereof "(e)".

Page 133, line 20, after 1972, insert: "the Clean Air Act,"

Page 300, line 18, strike out "covered hazardous substance" and substitute "hazardous substance (as defined in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980)".

Page 32, after line 3, insert:

(g) Minority Contractors.—(1) Section 105(a)(9) of CERCLA is amended by adding the following after "therefor": "and including consideration of minority firms in accordance with subsection (d)".

(2) Section 105 of CERCLA is amended by adding the following new subsection at the end thereof:

"(d) Minority Contractors.—In awarding contracts under this Act, the Administrator shall consider the availability of qualified minority firms. The Administrator shall describe, as part of any annual report submitted to the Congress under this Act, the participation of minority firms in contracts carried out under this Act. Such report shall contain a brief description of the contracts which have been awarded to minority firms under this Act and of the efforts made by the Administrator to encourage the participation of such firms in programs carried out under this Act.".

Mr. HOWARD (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

Mr. DINGELL. Mr. Chairman, reserving the right to object, and I will not object, but I would simply ask if those are the agreed-upon amendments that the staffs of our two committees and the minority have agreed upon and are offered pursuant to the understanding that I had with my dear friend from New Jersey.

Mr. HOWARD. If the gentleman will yield, I will tell him he is absolutely correct.

Mr. DINGELL. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

Mr. LENT. Mr. Chairman, reserving the right to object, and I will not object, I just would like to say that our minority staff, has had an opportunity to go through all of these amendments; they are noncontroversial, and we think they improve the bill. They will make it even more workable. We have no objection.

I yield to the gentleman from Kentucky [Mr. Snyder].

Mr. SNYDER. Mr. Chairman, we have an understanding on this and everything is all right.

Mr. LENT. Mr. Chairman, I withdraw my reservation of objection.

Mr. HILER. Mr. Chairman, the purpose of the amendment relating to certain notification procedures, is to correct a problem related to the sections of CERCLA which provide that any claim on Superfund for payment of necessary costs incurred by individuals or State and local governments as a result of carrying out the national contingency plan must have prior approval and authorization from EPA.

This amendment does not change that requirement but does require the administrator to notify affected persons and State and local officials of the requirement of prior approval or authorization by EPA before payment on a claim can be made.

Earlier this year, a number of individual wells around Elkhart, IN which provide drinking water to certain homes in the community were found to be contaminated with trichloethylene, an industrial degreaser. The Environmental Protection Agency, according to procedure, implemented interim measures to provide safe drinking water to the residents with contaminated wells while a long-term solution which included hook-ups of property dependent on the water in question to municipal water supplies and to clean up the contamination was developed. The community was assured by EPA that "everything would be taken care of."

With this assurance, some residents took the initiative to proceed with, and pay for, hook ups to municipal water supplies, assuming that they would be reimbursed for these expenses. These assumptions were not corrected until a number of people had taken this action.

Current Superfund law prohibits reimbursements for remedial action taken without prior approval from EPA. This is an understandable and necessary requirement. The problem that hurt residents in Elkhart, and that has occurred in other instances in States other than Indiana, is that it was not made clear that preauthorization was required. Thus, residents who waited for EPA to assist in the hook-ups were taken care of at no expense, while those who were understandably anxious to have access to fresh water lost a significant amount of money for the privilege.

EPA acknowledges that this has been a problem in other areas. In a memo dated November 25, 1985, from Henry L. Longest II, Director of the Office of Emergency and Remedial Response, to all Superfund Branch Chiefs, it was stated that "in several communities, residents paid the costs for hooking up their homes to the public water supply when local well water was found to be contaminated. Since this action was taken without prior EPA approval, the residents could not be reimbursed from the fund, even though the actions taken were approved in the scope of the work for that removal.

This amendment will require the Environmental Protection Agency to develop and implement procedures to provide clear and timely notification of the reimbursement limitations to relevant State and local officials, and affected individuals, as soon as practicable after an area has been placed on the national priorities list. This will insure that this type of confusion does not reoccur. Again, it does not attempt to change the current pre-authorization requirement, but will insure that EPA and Superfund assistance is provided fairly within a site, and that all parties—individuals, local and State governments, and the EPA—are operating with the same understanding regarding reimbursement.

Mr. YOUNG of Alaska. Mr. Chairman, I commend the committees for providing this opportunity to consolidate many technical and conforming amendments to this important legislation.

In particular, I want to voice my support for the amendment to section 421(c)(5) which provides for a limitation or restriction on the payment of costs or expenses of administration of the oil spill title. This restriction is the same one that applies to section 111 of the CERCLA law and is intended to apply in the same manner as it applies to the EPA regarding the costs of the chemical spill and cleanup program. What this means is that these funds may only be used to the extent that the costs or expenses are necessary for and incidental to the implementation of this title. Thus, this prevents the bureaucratic temptation to expand a program merely because funds are available in the oil spill fund. The oil spill fund is set up to compensate innocent victims and to perform all necessary cleanup work that needs to be done in the case of a spill. It should not be used to pay for personnel or other expenses that would be handled in the normal appropriations process for the agency that is given responsibility to carry out the functions of this title.

I urge my colleagues to support this amendment as a needed cost control measure.

Mr. SMITH of New Hampshire. Mr. Chairman, today I was prepared to offer an amendment to H.R. 2817 with my colleague, Representative ATKINS of Massachusetts, to establish an interim list provision for implementing permanent solutions in Superfund. I understand that this amendment has been included in the committee-approved package of amendments offered by Chairman HOWARD of the Public Works Committee. I commend the chairman and the committee for their foresight and understanding of the hazardous waste threat, and I am pleased that our amendment was included.

I believe the following prepared statement presents an interesting case for the need for an interim list and permanent clean up treatment of hazardous waste sites.

HOUSE OF REPRESENTATIVES,
Washington, DC

PERMANENT TREATMENT OF SUPERFUND SITES
LET'S COMPLETE THE JOB

This past April, a special investigation by a House oversight subcommittee revealed that in a majority of cases hazardous wastes removed from Superfund sites here taken to landfills that themselves were polluting in violation of the law. The survey showed that fifty four percent of the facilities receiving Superfund wastes either have inadequate groundwater monitoring systems or the status of their well systems is under review or unknown.

Case studies of Superfund sites conducted by the Office of Technology Assessment found that temporary remedial measures were less effective than had been anticipated, and in several instances had created new threats to groundwater. Another study of the six NPL sites which EPA has declared as "clean" found that at four of them, surrounding communities still could be exposed to serious hazards. One of them, the Butler Tunnel in Pennsylvania, had its cover blown of by Hurricane Gloria, with the resulting spill of hundreds of thousands of gallons of oil and chemical waste into the Susquehanna River.

Revelations such as these underscore the need to develop permanent solutions to Superfund problems. We simply cannot continue to deal with such toxic hazards by moving the wastes from one leaking pit in the ground to another. We must stop the Superfund shell game.

The Superfund legislation coming to the floor contains significant provisions on permanent treatment. It requires EPA to use permanent treatment technologies whenever such solutions are feasible and achievable.

This bill marks an important step in moving away from the "out of sight; out of mind" approach of the past five years. But even with the greater use of permanent treatment, temporary containment technologies will still be required at sites where no permanent treatment is feasible and achievable.

We plan to offer an amendment to the Superfund bill which would require EPA to keep those sites at which temporary remedial actions are implemented on an interim category on the National Priority List. The requirement of an interim listing was a feature of the Public Works version of the bill. We believe it is especially important because it will guarantee that sites that receive temporary, inadequate remedies do not disappear from public view by being removed from the NPL.

The amendment would further require EPA to make scheduled reviews of sites at which interim measures have been adopted. In the reviews, EPA would determine whether the interim solution was protecting human health and the environment. If they determined it was not, they would have to further determine whether a permanent solution had become feasible and achievable, or whethaer further interim measures were required.

The ultimate solution to the toxic waste problem in our country is for us to enhance our capability to incinerate, neutralize or immobilize hazardous substances on a permanent basis. If we have learned anything in the first five years of Superfund, it is that as long as the wastes remain hazardous they present a threat to public health.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection

The CHAIRMAN. The question is on the amendments offered by the gentleman from New Jersey [Mr. HOWARD].

The amendments were agreed to.

The CHAIRMAN. The Clerk will designate section 2.

The text of section 2 is as follows:

SEC. 2. CERCLA AND ADMINISTRATOR.

As used in this Act—

(1) CERCLA.—The term "CERCLA" refers to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (52 U.S.C. 9601 et seq.).

(2) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

The CHAIRMAN. Are there any amendments to section 2?

Mr. ECKART of Ohio. Mr. Chairman, I move to strike the requisite number of words for the purpose of engaging in a colloquy with the gentleman from Wisconsin [Mr. MOODY].

I yield to the gentleman from Wisconsin [Mr. MOODY].

Mr. MOODY. I thank the gentleman for yielding to me.

Mr. Chairman, I am considering offering an amendment to the Federal facilities provision that would allow EPA to bring enforcement actions in court against Federal agencies to clean up their hazardous waste sites at those Federal facilities. This was debated and passed by the House last year as floor amendment to H.R. 5640. It was view of many Members then that this provision was necessary to ensure that Federal facilities are brought into compliance with the act. I would ask the gentleman, given his expertise on this bill, that such an amendment is necessary to absolutely ensure that Federal facilities meet the full requirements of H.R. 2817?

Mr. ECKART of Ohio. I do not think it is necessary in this bill for several reasons which I will explain. But first I want to commend the gentleman from Wisconsin for his fortitude and concern on this issue. Certainly all of us agree that Federal facilities are bound to abide by this law just as are private parties, and we have written that requirement into the statute. I agree, also, that Federal facilities have been too slow in coming into compliance and that we need to take steps to ensure that they do so—soon and fully. However, I think there are several provisions in this bill that make your amendment unnecessary.

First, Federal facilities will now have to identify their sites, and put them on a cleanup schedule. This is a requirement of our new amendment.

Second, with respect to each Federal facility on the NPL, the Administrator of the EPA will be selecting the remedy. Therefore, he or she can ensure that the remedy is adequate to protect human health and the environment.

Third, and perhaps even most important, the States will play a much larger role in selecting and implementing remedies at Federal sites. They will be concurring in cleanup agreements for NPL sites and, indeed, they may ultimately sue Federal agencies if they believe a remedy is not adequate.

Fourth, citizens may also sue either the Federal agency or the Administrator if a requirement of the act is not being met.

I believe that these are very strong enforcement provisions that do permit recourse to courts to ensure that Federal facilities will have to come into full and timely compliance.

□ 1735

We have written that requirement into the statute. I agree also with my colleague that Federal facilities have been much too slow in coming into compliance, and we need to take steps to ensure that they do so soon and completely. The gentleman's amendments which were considered in H.R. 5640 and adopted may not be necessary and in fact are not in this version.

First, Federal facilities will now have to identify their sites and put them on a cleanup schedule. This is a requirement of our new amendment.

Second, with respect to each Federal facility on the NPL the Administrator of the EPA will be selecting the remedy. Therefore, he or she can ensure that the remedy is adequate to protect human health and the environment.

Third, and perhaps even more important, the States will play a much broader role in selecting what that remedy must be, implementing the remedy at the site, and also concurring in the cleanup agreements for the NPL sites. And in fact they may ultimately sue Federal agencies if they believe a remedy is not adequate.

Fourth, citizens may also sue either the Federal agency or the Administrator if any requirements of the act are not being met.

I believe that these very strong enforcement provisions do permit recourse to courts, will ensure that Federal facilities will come into full and timely compliance, and frankly I believe they are in this version of the bill simply because of the gentleman's persistence and insistence that Federal facility cleanups meet the same tough, high standards that we hope to have at other either settlement provision or sites that would be covered by the orphan fund.

Mr. MOODY. Mr. Chairman, I thank the gentleman from Ohio, and agree with his interpretation of the bill. I do not think that in the context of the new draft that we have this year, for H.R. 2817 the enforcement mechanism of recourse to courts of one agency against another would be necessary, and I believe the bill is adequate without it.

(Mr. MOODY asked and was given permission to revise and extend his remarks.)

The CHAIRMAN. Are there further amendments to section 2?

If not, the Clerk will designate section 3.

The text of section 3 is as follows:

SEC. 3. LIMITATION ON CONTRACT AND BORROWING AUTHORITY.

Any authority provided by this Act, including any amendment made by this Act, to enter into contracts to obligate the United States or to incur indebtedness for the repayment of which the United States is liable shall be effective only to such extent or in such amount as are provided in appropriation Acts.

The CHAIRMAN. Are there any amendments to section 3?

If not, the Clerk will designate title I.

The text of title I is as follows:

[NOTE.-Title I of H.R.3852

is previously reproduced

and may be found at p.3567]

AMENDMENT OFFERED BY MR. VENTO

Mr. VENTO. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. VENTO: Page 49, line 23, strike out "AMENDMENT" and insert in lieu thereof "AMENDMENTS".

Page 49, line 23, insert "(1)" after "SECTION" 111(e).—".

Page 49, after line 25, insert the following:

(2) Section 111(e)(3) of CERCLA is amended by inserting before the period at the end thereof the following: "; except that if any groundwater which is used as a water supply source by any municipality or the residents of any municipality is contaminated as a result of a release of a hazardous substance from a federally owned facility and if the United States is not the only potentially responsible party with respect to such release, money in the Fund shall be available for reimbursement of any costs incurred after December 11, 1980, by such municipality for provision or acquisition of alternative water supplies".

Mr. VENTO (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

* * * * * * * * *

p. H11151

SUPERFUND AMENDMENTS OF 1985

(Continued)

Mr. VENTO. Mr. Chairman, I rise to

offer an amendment to the Superfund bill.

Briefly stated, this amendment, which I have discussed with the minority and the majority, authorizes the expenditures from the hazardous substance response fund to reimburse municipalities for their costs in providing or acquiring alternative water supplies in cases involving ground water contamination where an agency of the Federal Government is one of the responsible parties.

The problem with the current law is that it of course forbids that type of expenditure unless it is made by the Federal Government or made by a State agency.

In other words, they are forbidden to reimburse a municipality. I have a list I have shared with the minority and the majority. This is a National Priority List, on which there are at least 32 sites, that are impacted. These are Department of Defense sites that are on that list.

As a consequence, these municipalities potentially—and especially one in my district—fall between cracks of the Superfund law because while the DOE may be partially responsible, they do not and cannot receive access to the Superfund Program, for instance, to remediate and supply water to the municipality. If the municipality spends the money, they cannot receive the type of remediation or compensation, so as a consequence small municipalities that are trying to meet the health and safety needs of their communities really are left falling between the cracks of what is intended by the Superfund law simply because DOD is not solely responsible and because under the law and DOD cannot or will not reimburse where there is potentially a Federal responsibility or another agency that has some responsibility. This has resulted in a $4 million cost for one municipality in my community.

Under the law, of course, the act provides the fund may be used to pay for the cost of the Federal or State reimbursement. While section 213, as amended by the committee of jurisdiction, goes far in addressing the problems of federally owned hazardous waste sites—and the gentleman from California [Mr. FAZIO] commented on that particular provision which I cosponsored with him—no section of the legislation under consideration directly addressed the issue of reimbursing municipalities for the costs incurred in providing past alternative water supplies in the case where the Federal Government agencies is one of the responsible parties.

Under section 120(a)(1), the EPA has the right to be reimbursed from the responsible Federal agency for funds they expend. So, in other words, this money would not be a drain on the Superfund. In fact, it would be reimbursed or subrogate the National Government agency that is responsible.

My amendment simply seeks to enhance the fine work done by my colleagues, the gentleman from Michigan [Mr. DINGELL], the gentleman from New Jersey [Mr. ROE], and the gentleman from New Jersey [Mr. HOWARD], and their minority counterparts, the gentleman from North Carolina [Mr. BROYHILL], the gentleman from Kentucky [Mr. SNYDER], and others.

I would also like to point out that a similar amendment has been adopted in the Superfund legislation passed in the other body. I believe it is essential that we do act on this particular provision. I just think it is a situation where municipalities are falling between the cracks when they are left with these types of costs, which I do not think is intended but which is the result of the law the way it functions today.

Mr. Chairman, I know that concerns have been expressed with regard to the overall cost of this, and I hope we can get some dialog going with regard to this issue.

Mr. ECKART of Ohio. Mr. Chairman, will the gentleman yield?

Mr. VENTO. I am happy to yield to the gentleman from Ohio [Mr. ECKART].

Mr. ECKART of Ohio. Mr. Chairman, I have a series of questions, not intending in any way to embarrass or denigrate the amendment.

Does the gentleman have any idea how much financial exposure there would be, where the money would come from, and how many sites might be involved?

Mr. VENTO. Well, as I said to the gentleman, I have shared with him the National Priority List. Those sites that are on the National Priority List have been placed there by the EPA. There are some 32 sites on the list that I gave to the gentleman.

That is not an all-inclusive list. There are others that would obviously be eligible. As an example, my municipality is not on that particular list. So it is a broad-based problem.

Of course, the end result is that as long as there is someone responsible for damage to the water supply, the fund would be subrogated to receive the payment benefit. In this case the municipality that I talked about spent $4 million. They have expended that much so far to drill wells for the water supply.

Mr. ECKART of Ohio. Mr. Chairman, will the gentleman yield further?

Mr. VENTO. I yield to the gentleman from Ohio.

Mr. ECKART of Ohio. In certain instances these costs may be offset against appropriated items of the individual Government agency, the Federal facility in question. Would there be a subrogation right of the fund to collect to offset that, or would it just be limited to the direct appropriation moneys taken from that particular Government agency?

Mr. VENTO. I do not know. I guess you would have to interpret the section you added to the bill in order to fully explain that. My understanding is that it would be subrogated to the agency.

In other words, in that application, section 120 of this particular bill speaks to this particular point. It says; "Each department, agency, and instrumentality of the United States Government * * * shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity * * *."

So I think what this says is that they themselves would remain liable. The problem here is, of course, and rightfully so, that these entities of the National Government do not admit their liability, so as a consequence they will not assume particular responsibility at this time. Very frequently we have a mixture of other private entities, of course, which would normally fall under the Superfund law and be covered by it, that may indeed share some of the responsibility.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. Vento] has expired.

(On request of Mr. Eckart of Ohio, and by unanimous consent, Mr. Vento was allowed to proceed for 3 additional minutes.)

Mr. ECKART of Ohio. Mr. Chairman, will the gentleman yield further?

Mr. VENTO. I yield to the gentleman from Ohio.

Mr. ECKART of Ohio. Mr. Chairman, do I understand that the gentleman contemplates that this amendment would in fact make money available for the construction of water mains, pump stations, and water delivery systems in individual communities, including buildings, trucks, maintenance, et cetera?

Mr. VENTO. It is possible that this would be necessary, but the only money that would be spent under this amendment would have to be authorized by the EPA to remediate the water supply for human consumption for safety and health purposes. The point is that it would not speak, for instance, to a complete remediation of an aquifer, and, in other words, the EPA would have to do whatever is reasonable and necessary to meet that requirement.

□ 1745

Today the example is in some instances, for instance, where a Federal facility, if it is a DOD facility, the only thing it will do is provide bottled water. In some cases they have gone further than that; but the problem with some of these facility pollution problems is that while they are fully capable and they are only willing to remediate the problem onsite on the Federal land not dealing with the plume of pollution that might be present in the aquifer and cause the expense to the municipality. This is where we have the problem; but indeed, we are not talking about remediation of the entire situation. We are only talking about meeting the water need, health and safety need, which is the goal of municipalities that have been subjected to this particular problem; so it is a somewhat narrow amendment that I've presented in that particular sense, but I think it deals with what is a critical problem that should be addressed.

Mr. ECKART of Ohio. Does the gentleman have any idea what the number of sites may be and what the potential dollar exposure of the fund would be if his amendment were adopted?

Mr. VENTO. Well, I think we have 33 sites. The site in my area is $4 million. If you multiply that out, assume every site had the same type of problem that we have, it would be something in excess of $100 million. That would be the exposure to the fund potentially, but not each one would necessarily have the same water problems, the same type of remediation. Some Federal departments, the Department of Defense or other Federal entities might be meeting some communities need.

In other words, we found instances where they went off the public reservation, but that is not very common.

I think, though, that this exposure is one that is the expressed intention of this legislation to attempt to cover. We hold Superfund out as covering this particular exposure. The fact of the matter is, of course, that it does not. We have, as I said, these municipalities falling between the cracks.

Mr. ECKART of Ohio. The last question I have, if the gentleman will yield, given the provisions of ground water protection earlier in the bill, can the gentleman envision that included in the construction of these water systems would be additional funds for the operation and maintenance of them as well?

Mr. VENTO. Well, I cannot anticipate that would be a cost that would be dealt to the fund. I think that would be a normal operation maintenance cost and we could not assume that the fund normally would be responsible for that. We are just talking about the remediation and the extra and the unusual costs that would be attributed to the pollution, not to the maintenance of such facilities.

Mr. ECKART of Ohio. Mr. Chairman, I thank my friend for yielding.

Mr. VENTO. I thank the gentleman for his questions.

Mr. KANJORSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to thank Chairman HOWARD and Chairman DINGELL and the members of the coalition who have accepted my amendment providing for the authorization to the Director of the Environmental Protection Agency to pay rewards up to $10,000 to individuals who provide information leading to the arrest and conviction of any person who violates and is subject to the criminal penalties of this act.

I think this should go a long way to providing an incentive for private citizens to get involved in cleaning up the environment.

I hope it will stimulate environmental watch groups very similar and analogous to the criminal watch group that has been very successful in this country in stopping the crime rate.

I think in areas such as mine where abandoned mines exist and throughout the country where illegal dumpers and pulluters have existed, without the protection or watch of the private citizen, this amendment will offer the opportunity for private citizens to get involved in helping the environment.

I want to thank all members of the coalition for accepting this amendment as part of the package of this bill.

The CHAIRMAN. For the clarification of the body, the question before the Committee is the amendment of the gentleman from Minnesota [Mr. VENTO].

Is there any further debate on the amendment of the gentleman from Minnesota?

Mr. LENT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, getting back to the amendment offered by the gentleman from Minnesota [Mr. VENTO], I am going to very regrettably have to oppose the gentleman's amendment, because it will allow fund moneys to be spent on contamination caused by Federal operations and Federal facilities. Is that the gentleman's understanding of his amendment?

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. LENT. Yes.

Mr. VENTO. The amendment would permit the reimbursement of dollars spent by municipalities for water supplies where a Federal entity is partially responsible for the damage to that water supply; that is, if the gentleman will continue to yield, we do permit the National Government, of course, the EPA can spend money directly on that or other entities can, according to law, as well as States can spend money for that particular purpose, as well as for others; but if it is a municipality that spends the money, the law specifically denies reimbursement on that basis.

Mr. LENT. But my understanding of the way this amendment would work is that the gentleman would permit Superfund moneys, which are not government moneys per se, they are moneys that have been contributed or raised through taxes on feed stock and other taxes, to be used to clean up a problem that is caused by Federal action.

I think that goes against the philosophy and the grain of the Superfund Act.

Mr. VENTO. Well, Mr. Chairman, if the gentleman will yield further, in section 120 of the bill, we deal with Federal facilities in this bill; so I think this provides a safeguard, it is my belief that it provides a safeguard so that it would subrogate the Federal entity or agency that is responsible to the same extent that private entities are.

The point would be that you can recover those dollars when liability is determined from the Federal entity, so that we are only talking about a very narrow use in those instances where municipalities spend the money for remediation of the water suppy and that would have to have the approval of the Administrator of the EPA. It would simply permit them to do that. It would not mandate it.

I think we leave the EPA directors' flexibility in place. We do not do violence to the basic concept of the law.

Mr. LENT. Mr. Chairman, I am sure the gentleman understands that the legislation as it is now written, even without the benefit of this proposal that is on the floor now, provides the Administrator with the authority to supply alternative water supplies if he believes that those water supplies are necessary to a community to protect public health in that community. That is already the law.

As I read the gentleman's amendment, he proposes to go much further than that and require that that water supply be cleaned up, where it was Federal action that occasioned the contamination.

Mr. VENTO. Well, if the gentleman will yield further, I appreciate his insight, but the fact of the matter is that the sites that I am talking about that are on the national priority list happen to be, for instance, DOD sites, or at least Federal entities partially have contributed to the pollution problem. I think the record should show that the EPA has not taken a role in these instances.

The consequence has been that the burden has fallen almost solely on the local governments in those instances. If the State or the National Government spent the money, obviously that would take care of the problem, but we are here with the amendment because indeed that has not been the case.

I would just point out to the gentleman that his concern I think is reasonable with regard to invading the fund, but under section 120 of the bill, of course, we provide for subrogation or recovery, which I think that should satisfy the concerns the gentleman has with respect to the full reimbursement.

Mr. LENT. Just to conclude, Mr. Chairman, it does seem there are many issues which this particular amendment seems to raise that are not quite clear. We have not had any hearings on it. I think it may undermine other provisions that are contained in the legislation.

The CHAIRMAN. The time of the gentleman from New York [Mr. LENT] has expired.

(At the request of Mr. SNYDER, and by unanimous consent, Mr. LENT was allowed to proceed for an additional 3 minutes.)

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. LENT. I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, I thank the gentleman for yielding.

What we have got to realize here, what we cannot lose sight of, is there are a lot of good things that need to be done in this country, but this bill is keyed in to and focuses upon cleaning hazardous waste sites and if we want to use the Superfund fund to do all the good things that need to be done in this country, we had better get $100 billion instead of $10 billion.

There is no question but what the gentleman from Minnesota has a problem, but to attempt to address all the problems that exist in this country by dealing with the Superfund legislation is going to get this whole program out of focus.

We need to get on with the job of cleaning up hazardous waste sites and not going into all these ancillary things that happen to go off one way or the other, good things that need to be done in the country. We need to oppose this amendment on the bill and seek redress in the forum, which is probably clean water.

Mr. VENTO. Mr. Chairman, will the gentleman from New York yield?

Mr. LENT. If I have enough time, I am glad to yield.

Mr. VENTO. Well, Mr. Chairman, I just think this is not an ancillary problem. The thing is that the law does provide for the utilization of money for the remediation of the water supply, so that is one of the legitimate purposes.

The CHAIRMAN. The time of the gentleman from New York [Mr. LENT] has again expired.

(At the request of Mr. VENTO, and by unanimous consent, Mr. LENT was allowed to proceed for 2 additional minutes.)

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. LENT. I yield to the gentleman from Minnesota.

Mr. VENTO. The fact is that under the law that is an appropriate utilization. The only question here is whether we are going to let municipalities that are concerned about trying to meet the safety and health needs of their communities receive the type of reimbursement for that narrow scope of activities, an activity that is compensated and paid for under the fund.

The problem here is that we have a dual responsibility in terms of a national Government agency contributing and the private sector potentially contributing. The fact is that they are denied the funds under the law the way it is. I think the Administrator needs this particular direction. I think we should give it to him.

Mr. LENT. Well, the gentleman makes some good points and he definitely pinpoints a problem that exists in our country, but I would respectfully respond to the gentleman that I think the legislation that we have before us now already, to some degree at least, responds to the concerns voiced by the gentleman.

I frankly think that the entire amendment that the gentleman is offering would have the effect of diverting some very important resources in the Superfund toward some purposes that we really did not have in mind.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. LENT. I am happy to yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, I would like to ask a question through the gentleman from Minnesota.

What the gentleman is asking for, as I understand it, which I do not think the amendment provides for, but with some modifications might, is to use the existing law which allows the Administrator the discretion to provide alternative water suppliers, to use his example, in the event of a problem associated with a dump site. His concern is that the Federal Government, perhaps a defense facility, has been the cause of the problem and that there has been some difficulty getting the Defense Department to be responsive in terms of reimbursement or paying for the cost.

The gentleman, as I understand it, has said that he thinks other provisions in the bill allow the Defense Department, really direct the Defense Department, to reimburse for damages flowing from Defense Department violations of the waste disposal laws.

The gentleman is asking that the Superfund be required to pay that money. What he does not do is to require the Defense Department to reimburse the Superfund, as it is required to reimburse for damages flowing from Defense Department miscalculations or errors.

I think the gentleman's amendment could be modified in such a way as to make that explicitly a responsibility of the Defense Department, thereby addressing the concern that the gentleman from New York has, which is a legitimate one, that the people who are contributing to the Superfund should not be contributing to cleaning up the Government's problems, or problems caused by the Defense Department.

So I would suggest as a means of being helpful to the gentleman from Minnesota that he modify his amendment as to make it explicit that moneys paid out of the Superfund to provide for alternative water supplies, as currently can be done, but are caused by problems of the Federal Government, can be paid, but the Federal Government is required to reimburse the fund as a responsible party, as any other responsible party would have to do.

I thank the gentleman for yielding.

The CHAIRMAN. The time of the gentleman from New York [Mr. LENT] has again expired.

(By unanimous consent, Mr. LENT was allowed to proceed for 2 additional minutes.)

Mr. LENT. Mr. Chairman, if I can just respond to the gentleman from New Jersey on that, I think he makes a good suggestion. Perhaps the author of the amendment will take the suggestion.

But there is another problem, it would seem to me. How do you get the Defense Department, or whatever the

Federal agency might be, to then appropriate funds for the purpose of reimbursement of the Superfund?

Mr. FLORIO. Mr. Chairman, if the gentleman will yield, under provisions of the law, the Defense Department is responsible for damages that it causes. Therefore, what we are saying is they are responsible now.

The concern I think of the gentleman is that they have not been responsive quick enough. They have not been forthcoming in terms of the money they are required to pay out and that the Superfund system is designed to provide for emergency response capability, one aspect of which is providing for alternative water supplies, which is the gentleman's problem, as I understand it.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. LENT. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, that is very nice thinking, but the Defense Department, the Department of Energy, and all the other Federal agencies are perhaps amongst the very worst of the establishers and maintainers of Superfund sites and similar hazardous waste dumps. They have never been before the Congress for a nickel to cleanup. They have no desire to have this in their budget. It does not buy weapons. It does not do the other things that are important and they spend their money on their basic mission.

□ 1800

That is why the principle of this amendment, or the suggestions, simply do not deal with the real world. The amendment should be rejected, and at the appropriate time I will get time so I may oppose it in greater detail.

Mr. DICKS. Mr. Chairman, will the gentleman yield just for a brief comment?

Mr. LENT. I would be happy to yield to the gentleman from Washington.

Mr. DICKS. I thank the gentleman for yielding.

Mr. Chairman, I am always very reluctant to enter into a colloquy in which it might seem that we were in disagreement because I have great respect for the gentleman from Michigan, but as I understand it, we have already appropriated money to the Department of Defense for cleanup, and in fact I have received money for the cleanup efforts out near the Ft. Lewis area in my district, but we had to beat them over the head to get the money.

So I want to tell the gentleman he is absolutely right on their reluctance, but what I think we should do, the money is there, it has been appropriated for cleanup, and it is a kind of Defense Department superfund. They have not used it. What I think we need to do here is to require that when they have a problem like this that the money shall come out of the Defense Department fund that we have already appropriated money for, to reimburse the local governments that have had to carry this responsibility.

I agree with those who have suggested that the gentleman from Minnesota should modify his amendment, because the money is available.

The CHAIRMAN. The time of the gentleman from New York [Mr. LENT] has again expired.

(By unanimous consent, Mr. LENT was allowed to proceed for 2 additional minutes.)

Mr. McCURDY. Mr. Chairman, will the gentleman yield?

Mr. LENT. I yield to the gentleman from Oklahoma.

Mr. McCURDY. I thank the gentleman for yielding.

Mr. Chairman, I would only say that as the chairman of the panel on environmental restoration programs in the Committee on Armed Services that wrote the language in this bill to try to provide a process within the Department of Defense and other Federal facilities, I would state to the gentleman, and certainly to the author of this amendment, that the Department of Defense this year spent $329 million on their environmental restoration programs, and in the past 2 years in excess of $400 million.

But the issue here, as I understand it, is that the actual judgment or determination of liability has not been made. So they are trying to receive money when there has not even been a declaration of fault of responsibility. So it is inconsistent for us to be standing here and saying we are divvying out money when there has not been a clear adjudication. So it confuses the process that we are trying to establish in the program that is already in place where they identify problems and go to try to have a cleanup.

So I would reluctantly at this point oppose this amendment.

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. LENT. I yield to the gentleman from Minnesota.

Mr. VENTO. I thank the gentleman for yielding.

Mr. Chairman, the point that is being missed here, and I appreciate the time and the consideration of the Members on this issue, is that the military and other Federal agencies are perfectly willing to cleanup their own sites, and they are doing it, and that is what they are spending the money on. They provided some bottled water. They have not had a clear or consistent policy with regard to this issue, but they are on site.

The question now is that we are off-site and we are dealing with water out of an aquifer and a municipality's well becomes contaminated with trichlorethylene or other heavy metals and they are met with the responsibility of providing clean, wholesome water to that particular municipality. The Department of Defense or other Federal agencies, and rightfully so, are in a situation of determining who is at fault.

The fact of the matter is, the municipality has had to drill the wells deeper and has had to do other things to provide that water, and has literally spent millions of dollars across this Nation, our municipalities have, to meet those water needs.

The CHAIRMAN. The time of the gentleman from New York [Mr. LENT] has again expired.

(On request of Mr. VENTO and by unanimous consent, Mr. LENT was allowed to proceed for 3 additional minutes.)

Mr. VENTO. If the gentleman will yield further, the point is that we should not hold hostage those communities and those municipalities to fault-finding to the absolute extent that is necessary and justified in many instances here. It is not a rap on the Department of Defense and other Federal entities. What we are doing is making the municipalities carry this because we have not definitively defined who is responsible.

This is what the Superfund law is supposed to address. I am not asking in this particular amendment to remedy or to correct the entire problem with the aquifer and to correct the entire water supply. I am saying to help meet health and safety water needs. That is all we are asking is to help pay for the water supplies.

The gentleman from Oklahoma, who happens to have one of those sites in his district, I think would be well served by this.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. LENT. Before I yield any further time, just let me say that the law as it is presently written does permit the Environmental Protection Agency to supply water where it is an emergency situation and where it is necessary to protect public health and the environment. That is already in the law.

Mr. VENTO. If the gentleman will yield further, can he cite any of these particular locations on the list that I provided, which EPA has provided to me, where they have in fact done that? There are none. In fact, there are installation restoration programs in place on-site by DOD and so forth, but there is not an action by EPA.

Mr. LENT. Mr. Chairman, if I may reclaim my time, I said that they must be able to demonstrate that it is necessary to protect public health and the environment. If you do not have an emergency situation, then the law is not triggered. But you have a problem; there is no question about it. The Federal Government ought to respond in a better way.

But I am saying that the way to satisfy your problem is not to simply dip into this Superfund, which is, after all, money which has another purpose entirely. It is contributed through a feedstock tax and others, not to clean up Federal Government problems, but to clean up problems created by the people who pay the taxes.

Mr. VENTO. If the gentleman would yield, I think the major problem here is that we are tripping up on the basic supposition on which Superfund was created to resolve, and that is the question of fault finding. That is really what is the trip wire here with regard to the national Government, the question of fault finding. What we are saying here is that we are not going to get the Federfal agencies to admit to being at fault in these particular instances when there is any question with regard to that.

The final consequence is that we are holding these municipalities and communities hostage with regard to that test.

Mr. DICKS. Mr. Chairman, if the gentleman from New York will yield, I had an exact situation like this in my district where the area was off the base and we had the polluted area from the base migrated out into the aquifer outside.

I happen to be on the Defense Appropriations Subcommittee and we were able to catch their attention, but for other people who may not have that same leverage we have a problem here. The problem is that the Defense Department says, "We are not sure we are responsible. We have to continue to study the issue," and it goes on and on and on.

Finally, out in our areas, EPA said, "Well, we think you are responsible. The evidence we have is that you are responsible," and then finally they had to do something about it. So I think this is a very serious problem and one that we are going to have to deal with.

Mr. LENT. Mr. Chairman, if I may reclaim my time, I would agree with all of the gentlemen who have spoken on this.

The CHAIRMAN. The time of the gentleman from New York [Mr. LENT] has again expired.

(By unanimous consent, Mr. LENT was allowed to proceed for 1 additional minute.)

Mr. LENT. Mr. Chairman, this is a problem, but I am very reluctant to support the amendment offered by the gentleman because it seems that he is setting the Superfund off on an uncharted course toward unspecified goals. If we are going to achieve the goal that we really intend to achieve; namely, the cleaning up of hazardous waste sites, we are not going to be able to reach into this fund to solve every problem that civilization and mankind have.

We are going to have to keep the fund on the track toward cleaning up hazardous waste sites. In an emergency, the law now provides on an interim basis for providing water supplies to a community where there is a hazard to public health or where there is a hazard to the environment. But to simply reach in long-term and cleanup scores of these sites that have water supplies that have been contaminated through some fault of the Federal Government, I do not think that is what we have in mind with the Superfund.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think it is important that we should understand the purpose of the legislation before us, and then I think it is important that we should understand the purpose of the amendment offered by the gentleman from Minnesota.

The Superfund legislation is established to do two things: One, to provide a program for cleaning up of hazardous waste dumps established by industry and private sources. The financing of that is to be by a tax upon industry.

Let us look at the magnitude of the problem. The magnitude of the problem is that we may have 10,000 or we may have 20,000 sites according to the Office of Technology Assessment.

☐ 1810

This does not count the Federal dumps. It counts only those which are established by private industry.

The purpose of this bill is to tax private industry to clean up for private wrongdoing, not to clean up for wrongdoing by the Federal Government.

Now let us look at the amendment offered by my good friend from Minnesota. I want to observe that it causes me great pain to oppose his amendment because I am sure it is offered in the best of good faith, and I have great respect and affection for the gentleman. But the hard fact of the matter is it is a very bad amendment. It does not prospectively clean up the dumps. It will compensate a community for any expense which was incurred after December 11, 1980, by such municipalities. That is, any of the many thousands of municipalities in the United States may receive compensation for purposes of acquiring alternative water supplies, construction of water mains, purchase of tank trucks, filtration systems, pump systems, whatever expenditure might be. There is no criteria here for how the expenses shall be judged as to whether they conform or not, and there is no criteria here as to establishing liability. And it is not for the wrongdoing of private citizens who are paying the taxes, rather it is to pay for the acquisition of alternative water sources over the past 5 years, since December 11, 1980, by the Federal Government.

Now the gentleman referred to sections of the bill which deal with cleanup by the Federal Government. The bill specifically provides that behavior by the Federal Government shall be paid for from appropriated funds, not, I repeat, not, from Superfunds.

Now we are talking about 10,000 to 20,000 sites in this country, and it may very well be many more times that. The amount of money that we are raising by a tax which is approaching the level of extortion is $10 billion over 5 years. That will not clean up all of the sites that we are trying to clean up. It will only clean up a fragment of them. We may very well see that the Superfund Program is going to have to be renewed as long as the youngest of us and the most recently arrived of our colleagues in this Chamber are sitting here.

The question before us is should we expand the coverage of the Superfund Program while we face perhaps $100 billion in liability. The amendment would provide money for costs incurred in providing water for as long ago as 5 years which resulted from actions by the Federal Government at Federal installations. The money will be provided with no standards before us as to what constitutes wrongdoing by the Federal Government, with no standards about the fashion in which the community has spent the money, with no requirements for proper behavior by the municipal corporations, and with no provisions to prevent goldplating where municipalities run out and say, Well, we are going to put in a first-class waterworks using oversized mains, and the very best of modern technology where our old system was clearly inadequate. And if there is no establishment here that there be clear separation between Federal wrongdoing and private wrongdoing, municipalities can simply run in, present a bill to the Federal Government, walk out with a pile of money and a new water system. If you want to address the most difficult, dangerous, and serious single environmental problem in this country, abandoned waste sites, and if you want to expend well the limited amount of money that is available in this particular piece of legislation, then my colleagues, I urge you to reject this amendment. It is well-meaning, but it is not well thought out, and it has a most mischievious effect.

Mr. SIKORSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of my good friend from Minnesota [Mr. Vento] and his excellent amendment to H.R. 2817. For too long, Federal agencies and facilities have enjoyed special privileges that no water waste disposers have.

What is good for the goose is good for the gander. What is good for the private sector is good for the public sector.

This amendment will stop Federal agencies responsible for contaminating municipal water supplies from using the poor excuse of overlapping budgetary jurisdictions to go slow, say no on providing decent, wholesome water supplies, one of the necessities of life that my chairman so eloquently talked about as he opened the debate on Superfund today.

The amendment will provide an incentive for faster resolution of these disputes. My congressional district, Bruce Vento's congressional district, share a common problem, the Twin Cities Army Ammunition Plant. It is a major source of regional ground water contamination. And the site is a perfect example of how damaging Federal agency inaction can be. Citizens and local cities were forced to find alternative water supplies at great cost to them. The citizens and the communities in that area of Minnesota cannot wait until EPA and the Department of Defense argue over the bill or the method of cleanup. They and their children are at risk and the danger grows as the seconds tick away.

The concern is not over gold-plated systems. It is purely at the discretion of the EPA Administrator. A million Minnesotans, and a third of the Americans who depend on ground water for their drinking water, share this concern, and they want action now, not 5 years from now. This is the time. We have a chance to amend the Superfund.

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. SIKORSKI. I am pleased to yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Chairman, I want to commend the gentleman and respond just a little to the distinguished chairman. The fact is that just like the provisions of this law and the rules and regulations that deal with the type of reasonable expenditures that are provided for restoration of water supplies, they would fall under the same type of administrative proceedings. In other words, the Administrator would have to make the decisions.

The fact is he may have the authority to do so today, but the fact is he has not done so.

Mr. SIKORSKI. That is right. If it is good enough to give the Administrator discretion in cleaning up 10,000 sites nationwide in the standard of cleanup, it is good enough for giving the Administrator the discretion in other sites.

Mr. VENTO. I think my colleagues who have spoken in opposition are really begging the question. Superfund was presented as a solution which doesn't worry about the last definitive fact with regard to who is at fault. In other words, to try and remediate and correct the problem.

The fact is, in this particular instance, the Federal agencies are guilty of not admitting to their faults. The private sector is not admitting to their faults. They are pointing the finger at the Federal agencies, and municipalities and local governments are caught in between, and municipalities are left holding the bill while they are debating in court with regards to these issues.

This deny's the supposed promise of Superfund, we are denying it to these municipalities when there is potential National Government involvement, and in the case of my municipality, and with regard to others, I think the costs here are not so significant because it would be subrogated, that is to say the fund would be subrogated to the appropriation, and to our process. If we find it is an expensive process, then I would say we had better go to our friends on the Appropriations Committee and appropriate the money and provide it so that DOD can do what we intend.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. SIKORSKI. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, could the gentleman tell me how much this amendment is going to drain from the Superfund? How much is it going to cost the fund? How much is it going to cost?

Mr. VENTO. If the gentleman will yield to me, I cannot give the gentleman, cannot tell him what the cost would be in this one instance.

Mr. DINGELL. How much is the total cost going to be? Or what is the ceiling on it?

Mr. VENTO. The costs of this is repairing municipal water supplies across the Nation that have been damaged, in combination by the Department of Defense, by other Federal agencies and in conjunction with the private sector.

Mr. DINGELL. How much is that, $1 billion?

Mr. SIKORSKI. I think the answer is as much as EPA and the administrator allow in the construction of these facilities.

Mr. DINGELL. Is it $10 billion?

Mr. SIKORSKI. It is as much as the EPA Administrator allows.

Mr. VENTO. If the gentleman will yield, I think the same question could be asked with regard to any of the proposals that we have before us. What is the total cost of remediating and then repairing the environment and all of the damage that has been done? We take a guesstimate. If some say it is $100 billion, then why is this bill not at $100 billion, and why does the bill not have $100 billion in it if that is the case because we are going to do it, we are going to do it in a reasoned, measured proposal.

I am not going to suggest that the gentleman's bill is inadequate because it does not provide $100 billion. In this same instance, I would say that the cost of this, I assume, would be met in a reasonable and a reasoned manner by the EPA in terms of providing the water supplies.

I do not think the amendment specifically breaks the back of this measure. It intends to meet the promise of Superfund.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. Sikorski] has expired.

(On request of Mr. Vento and by unanimous consent, Mr. Sikorski was allowed to proceed for 3 additional minutes.)

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. SIKORSKI. I yield to the gentleman from Michigan.

Mr. DINGELL. Every billion dollars that is spent under this provision will not be spent to clean up Superfund sites. Every nickle that is spent on this is going to do nothing to contribute to the public health, but it is going to prevent major expenditures from being made to eliminate hazardous wastesites that are polluting aquifers, that are endangering the health of people, that are jeopardizing clean air, safe drinking water, ground water, surface water, and the lives of people in the area.

Mr. SIKORSKI. I think the only nickels that will go out will go out at the express discretion of the EPA Administrator who is aware of the constraints of the fund, and beyond that, only go to the take care of decent, wholesome drinking water which does benefit this health and safety.

Mr. VENTO. If the gentleman will yield again, I thank the gentleman for his helpful comments. But I would say that the pollution that occurs on these or approximately close to these Federal facilities, that Federal pollution is just as harmful as pollution that comes from a private source. I think it is the goal of this Congress to address the totality and the total question of what the pollution is, not necessarily only the source of it.

We have tried, and I think the law does provide for safeguards so that the dollars would come from the Federal sector if we are committed. I think that just as we are committed in committing the private sector to this that we would commit and do commit the public sector to meet those same standards and meet those needs. I think the problem here is we have a combined responsibility that we should not walk away from and say, because it is combined, we are not going to help you and local government and the people are on their own.

The people in New Brighton and the people in other parts of this country that are subjected to this type of problem, they are not interested necessarily in where the pollution comes from. They need the problem solved, they need a clean drinking water supply. They need the clean air and the other things that we hold up as a promise of Superfund. We cannot wash our hands of it and walk away saying we are not going to solve that particular problem.

People are using this law to hide behind and avert and circumvent that remediation of these particular sites, and you ought to be aware of that. I know it is the intent of the authors to address that particular concern. I think the amendment would further that particular cause.

Mr. McCURDY. Mr. Chairman, will the gentleman yield?

Mr. SIKORSKI. I yield to the gentleman from Oklahoma.

Mr. McCURDY. Mr. Chairman, I would like to inquire of the gentleman if he has a figure as to the cost of the alternative water supply that was developed for New Brighton?

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. SIKORSKI. I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Chairman, we have expended $4 million in terms of drilling the wells deeper in the area. That really is what the expense has been for the New Brighton area.

Mr. FAZIO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to attempt to in a sense join with my friend from Minnesota by indicating that we all feel the anxiety that he does in his community. The gentleman from Oklahoma [Mr. McCURDY], the gentleman from Washington [Mr. DICKS], all of us have had this similar experience.

The Department of Defense, as well as other Federal agencies, have been very slow to respond to the legitimate concerns of communities around the bases that have had their water supply polluted. But, in fact, I think we have moved in this bill to remedy this problem directly. We have, through the McCurdy task force, which has, I think, borne the brunt of the work in this regard, and through the creation of a separate military superfund with DOD dollars, not Superfund dollars, I say to assure the gentleman from Michigan [Mr. DINGELL], chairman of the Energy and Commerce Committee in his concern about the invasion of funds, we will be in a position to expedite the cleanup of these sites. Further, we will clean up these sites under the approval of EPA, because under the bill as currently drafted, and I am sure in the form it will pass in, EPA has final say on all NPL site cleanups regardless of whether they are military or other Federal agency sites. That is the first time that has ever occurred.

□ 1825

Up to now we have always given DOD, through the use of an Executive order, carte blanche to do it its own way; and as a result, they have failed miserably to satisfy the Members and their constituents.

I think what we have accomplished

in the provisions that have been agreed to by both the Committee on Public Works and by the Committee on Energy and Commerce is a future solution to the problem that the gentleman from Minnesota [Mr. Vento] very accurately and pointedly outlines for us here on the floor today.

We have no track record; we cannot prove it. It is always nice to have the problem solved sometime in the future, Mr. Vento, I understand, but I believe we will not be required to use this vehicle if the bill that we currently have before us is enacted and is functioning the way it is intended.

I am happy to yield to my friend from Oklahoma.

Mr. McCURDY. I thank the gentleman for yielding, and I commend him again for his statement and his hard work in this area. I would just point out again to the Members that for the first time we have a central account where there is going to be specific, appropriated money that can be readily identified for the cleanup of these sites that have been caused by Federal facilities.

So it is an area that we are going to be able to go and look at, and hold them accountable for what they are doing in this area. Also, for the first time, the EPA Administrator is put over this fund and he is given much broader authority than he has had in the past, and I think this is crucial.

I identify with the problem of the gentleman from Minnesota [Mr. Vento]. I have one of those sites; we have a similar problem, but in many of these instances, the particular Federal agency; Air Force or whatever, has gone out an supplied alternative water sources, and they are trying to provide this when they can determine that they are at fault.

Mr. FAZIO. Mr. Chairman, I am happy to yield to my friend from Michigan.

Mr. DINGELL. I can sympathize with the frustrations of the gentleman from Minnesota [Mr. Vento]. The gentleman from California and the gentleman from Oklahoma have dealt with the issue with the assistance of the two committees.

Section 213 is the section the gentleman refers to. That is available for precisely the kind of expenditures we are talking of here. It is available from appropriated funds. It does not violate Superfund, and it does not prevent Superfund moneys then from being spent for the cleanup.

So the gentleman from California, the gentleman from Oklahoma, and the two committees have already addressed the problem, and though I commend the gentleman for his interest and his sincerity, section 213 deals with the problem and I would urge the House to support section 213 and reject the amendment.

Mr. FAZIO. Reclaiming my time, I think it is most important for the gentleman from Minnesota to understand that if the source of the money was clear, but the power to trigger that source was still in question, I would share the level of anxiety that the gentleman has.

However, giving EPA that responsibility, removing it from a DOD budget officer, I think goes a long way to getting to where we all know we need to go; and that is an end to the endless delays that have made it impossible for these communities to get the kind of attention they need.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota [Mr. Vento].

The amendment was rejected.

Mr. PACKARD. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to take this opportunity to engage my chairman, Mr. Roe, in a colloquy to clarify the Public Works Committee's intent regarding de minimus settlements as they affect title holders. While we discussed this issue informally during consideration of Superfund in committee, it came to my attention that underlying title holders of property where toxic wastes are generated or disposed of could be held liable under section 121 of the committee's version of H.R. 2817. These title holders include individuals, development companies, public and private institutions of all kinds. Could my chairman take a moment and explain exactly what was the committee's intent in addressing the issue of settlements and third-party title holders?

Mr. ROE. If the gentleman will yield, Mr. Chairman, I completely understand his concerns. The report language we originally agreed upon was inadvertantly left out of the print we released last month. The gentleman from California has been active in addressing the issues involving liability and de minimus settlements, although those matters were under consideration in the Judiciary Committee, which has primary responsibility for this facet of Superfund. It has come to my attention that Princeton University has also expressed concern about their liability for toxic waste cleanups on land they own, but over which they do not have management oversight.

Mr. **PACKARD**. Reclaiming my time, is it correct for me to state that the committee recognizes that landowners whose participation is limited to ownership of the fee title to or equity interest in the property on which a toxic-generating or disposal facility is located and who have no management control over activities at the facility giving rise to a response action? Further, the committee believes it to be inequitable to consider such non-contributory parties as owners or operators of a facility? Finally, I would hope that the understanding which came out of our informal discussions leads the committee to expect the administrator of the Environmental Protection Agency to actively utilize his authority under this act to enter into de minimis final settlements and grant releases from liability to eligible potentially responsible parties.

Mr. **ROE**. The gentleman's statements do, indeed, reflect the committee's position on this point.

Mr. **PACKARD**. Mr. Chairman, I sincerely appreciate the colloquy, and it will solve some major concerns that I have had in this particular section of the bill.

Mr. **ROE**. I thank the gentleman.

The **CHAIRMAN**. Are there further amendments to title I?

AMENDMENT OFFERED BY MR. FRANK

Mr. **FRANK**. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FRANK: *Page 39, line 24, strike out the closing quotation marks.*

Page 39, after line 24, insert:

"(m) LANDOWNER LIABILITY.—*There shall be no liability under subsection (a)(1) of this section for a person otherwise liable who can establish by a preponderance of the evidence that he—*

"(1) is the owner of the real property on or in which the facility is located;

"(2) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility, the release or threatened release of which causes the incurrence of a response cost;

"(3) did not contribute to the release or threat of release of a hazardous substance at the facility through any act or omission; and

"(4) did not acquire the property with actual or constructive knowledge that the property was used prior to the acquisition for the generation, transportation, storage, treatment, or disposal of any hazardous substance.".

Mr. **FRANK** (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The **CHAIRMAN**. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. **FRANK**. Mr. Chairman, let me, to clarify things, say at the outset that this is not the Federal cause of action. Indeed, this happens to be an amendment that I am mildly chagrined to say the chamber of commerce probably supports, but it has a lot of good on its side as well.

I am a strong supporter of the Superfund Program. I think we ought to have one that is tough and comprehensive. Part of having a tough and comprehensive program is having provisions that allow innocent individuals to be treated as innocent individuals.

In other words, nothing can be more damaging to our efforts to have a program like this work, nothing is more damaging to a good regulatory scheme that having anything in it that could inadvertently sweep out within its coils innocent individuals.

This amendment says that wholly innocent landowners will not be held liable. We have had problems before with the leases being granted improvidently. This amendment, I must say, is drafted in a way to make that extremely unlikely.

To get a release from liability under this section, a landowner must not have himself or herself allowed or permitted any storage, not have contributed to the release of any substance and, and this is very important, the landowner has the burden of proof to show that this landowner had neither actual nor constructive knowledge at the time of purchase that the property had been used for hazardous waste materials.

In other words, you can get a release under this only if you can show by the preponderance of the evidence that you not only did not contribute to it; you did not even know when you bought it that it had this there.

Mr. BREAUX. Will the gentleman yield?

Mr. FRANK. I yield to the gentleman.

Mr. BREAUX. I thank the gentleman for offering his amendment. Let me ask a question, and perhaps the chairman of the committee may be able to respond, or the author of the amendment.

Without the gentleman's amendment, am I to understand that a person would be able to buy property, a tract of land and have in the deed of conveyance a covenant that this property is transferred and there is no toxic waste located on this property, there is no way that person can visually find out or reasonably know that there is any kind of toxic waste underneath that property; and then 5 years or some time period down the road discover for the first time that that property has some toxic wastes that had been buried years before under his property, that without the gentleman from Massachusett's amendment that that property owner would then be somehow held responsible?

Mr. FRANK. Let me respond by saying we are not sure of the answer to this. I think all of us would agree that you should not be held responsible. I would hope that frankly even under the current law you might ultimately be held not responsible, but no one can have that assurance.

As people know, if you are in business, if you have got a public corporation or whatever, a contingent liability can be a problem for you.

□ 1835

Even if you get legal advice that says ultimately you might be held not liable if the possibility exists, and the possibility would exist under this set of circumstances, it could be a real problem for you. The only way to be sure that there would be no liability in the circumstances described by my friend from Louisiana would be to adopt this amendment.

Mr. BREAUX. Mr. Chairman, would the gentleman yield further?

Mr. FRANK. I yield to the gentleman from Louisiana.

Mr. BREAUX. Could the gentleman from the Committee on Public Works respond to my question? Without the gentleman's amendment, could the situation which I outlined, could that type of a property owner be held liable for damages?

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. FRANK. I yield to the gentleman from New Jersey.

Mr. ROE. I am not legally trained. I am technically trained.

Mr. FRANK. That should get us a straight answer.

Mr. ROE. Well, you are going to get it.

Mr. ROE. You would have to write something, if I may respond to the gentleman, you would have to write something into the law that would say: "Buyer beware." If a person buys a piece of property, and he does a record search and, as you well know, gets his deed, and he gets the details in his deed that something is there that he is unaware of and nobody knew about, he would be responsible for it under existing law. Unless you make provisions to waive that issue.

Mr. BREAUX. Mr. Chairman, will the gentleman yield?

Mr. FRANK. I yield to the gentleman from Louisiana.

Mr. BREAUX. It looks like we should try to craft some type of provision that really protects the innocent landowner who has not done anything to put the waste there, or would have no way of knowing that the waste was there, and somehow wind up down the road years in advance that the property has toxic wastes on it. That person should not be held liable.

Mr. BERMAN. Mr. Chairman, will the gentleman yield

Mr. FRANK. I yield to the gentleman from California.

Mr. BERMAN. The gentleman from Louisiana is exactly correct. And I am aware of a case where a person, in totally good faith, purchased a tract of land and then was unable to get out of any liability even though they were able to demonstrate they had no knowledge, there was a total arm's length transaction, and they were acting totally in good faith. I think this points out very clearly the need for this amendment.

Mr. DAUB. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the gentleman's amendment. I think from a legal point of view and from my experience with the problem that exists, posed particularly by the example of the gentleman from Louisiana, the amendment is a good one. I think we do have to make some effort to clarify the confusion that exists in the case law on this point. While an argument could be made that we do not need this amendment, that it is already taken care of in the law, courts have differed on that point. So this is a way of establishing some causation, some nexus, some connection on a point, however small it may be to some, that someone who is in this position, who did not contribute to the toxic waste, to the cleanup, to the identification, to the response that is needed, is not going to be held liable.

For that reason, I really want to commend the gentleman for his careful craftsmanship, for the limitations contained in his amendment, and I urge the committee to accept it.

Mr. MOAKLEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment offered by my good friend and colleague—the gentleman from Massachusetts.

In 1983 PCB's were found on a 9-acre industrial site located in a largely residential neighborhood in my congressional district. The site had been abandoned for several years and had been used during recent years as a local fair grounds.

In 1979, Grant Gear, a small manufacturer with 80 to 100 employees, purchased the then vacant property for their manufacturing facility, only after they had bought the site and begun production did they discover that previous owners, going back to the 1930's and 1940's had disposed of PCB's on the site.

It is my understanding that Grant Gear has never used PCB's had no reason to believe PCB's were located on the site, and purchased the PCB's from a prior owner who apparently did not use PCB's. The result of the discovery of PCB's by Grant Gear has been a residential community alarmed with the revelation of PCB's in their neighborhood and a small company simply by misfortune facing uncertainty and frustration as the owners of a Superfund site.

Grant Gear has attempted to do the right thing by cooperating with both Federal and State agencies in the cleanup and removal of the PCB's. Grant Gear has sued the previous owners and opeators for response costs incurred to date, including site testing for hazardous materials and health testing of employees. Grant Gear anticipates additional expenses for the remedial investigation and feasibility study.

Unfortunately the disovery of PCB's came just as Grant Gear was preparing to make several needed capital investments in new equipment—equipment which is necessary for Grant Gear to remain competitive.

Because of the pending liability, financial institutions are obviously unwilling to finance the capital investment thereby striking a second blow to a company who simply bought the wrong property.

Grant Gear contacted me last year to request assistance in helping them ascertain what policy EPA had for dealing with innocent property owners. Grant Gear informed me that they had been unable to get EPA to explain their policy for reaching settlements with innocent landowners.

Much to my dismay, EPA notified me that they do not have a policy on innocent landowners. More than this, EPA has a policy for de minimis contributors, but would not extend this same policy to innocent landowners. EPA informed me that no policy will be established until final liability regulations are issued.

The Frank amendment establishes a fair policy toward dealing with the truly innocent landowner. I believe that we all agree that those who are responsible for the illegal disposal of hazardous wastes should be held accountable. Unfortunately, under present law and EPA policy, we also hold an innocent landowner equally responsible. The Frank amendment will correct this injustice by establishing a fair policy for dealing with the truly innocent landowner, the Frank amendment deserves our support.

Mr. FLORIO. Mr. Chairman, would the gentleman yield to me for a question, through the gentleman from Massachusetts, to the author of the amendment?

Mr. MOAKLEY. I yield to the gentleman from New Jersey.

Mr. FLORIO. I thank the gentleman for yielding.

I think the apprehension about this amendment is that someone might use what appears, on its face, to be a good amendment providing for a legitimate defense in some way to cloak their real intentions. I would like to ask the author of the amendment: in paragraph 4, the language "did not acquire the property with actual or constructive knowledge," I think that the constructive knowledge language is extremely important. Wouldn't that language address the concerns that some might have about this defense being used by those who only pretend not to be aware of problems on the land? The constructive knowledge, it seems to me, addresses some of the legitimate complaints that some might have.

Mr. FRANK. Mr. Chairman, will the gentleman yield?

Mr. MOAKLEY. I yield to the gentleman from Massachusetts.

Mr. FRANK. I appreciate the gentleman from New Jersey making that point. He is absolutely right. And let me strengthen what he said. Not only would you lose this defense if you had constructive knowledge, you have the burden of proof to show that you did not have constructive knowledge. The way this is drafted, it says you must establish by a preponderance of the evidence that you did not have constructive knowledge. In other words, if it was widely known in the neighborhood to be not just a hazardous waste site but if anything had been dumped there, if it was known at all, you would have to go to court and prove the negative. We all know that could be hard. So this is not a problem in that sense. I appreciate what the gentleman has pointed out. You have to go to court and prove by the preponderance of the evidence that you did not have even constructive knowledge, that is, that a reasonable person could not have been expected to know that, not even a reasonable person in the neighborhood. You, as a diligent purchaser, would have been under some obligation to find out, and it is only in that case where you failed to be a diligent purchaser that you would be liable.

Mr. FLORIO. Mr. Chairman, I think the amendment is a good amendment and urge support for it.

Mr. ECKART of Ohio. Mr. Chairman, I move to strike the requisite number of words, and I propose to engage in a colloquy with the author of the amendment.

(Mr. ECKART of Ohio asked and was given permission to revise and extend his remarks.)

Mr. ECKART of Ohio. Mr. Chairman, I have several concerns of particular interest to me. First, in subparagraph 2, commencing with the phrase at line 9, "the release or threatened release which causes the incurrence of a response cost." As you and I both know, you could have releases which do not necessarily result in a response cost. You can pollute the ground water, but they can come out and say it is not bad enough and therefore there is no cost, but pollution has resulted. You have thousands of sites, only 800 of which are on the NPL which can incur response costs. So that does not mean that the pollution has not occurred, it just means that it is not bad enough to make it on the NPL.

Does the gentleman have an objection to striking the language after the comma in line 9?

Mr. FRANK. Would the gentleman yield to me?

Mr. ECKART of Ohio. I yield to the gentleman.

Mr. FRANK. Is the gentleman's concern—as I understand, his concern is the part in paragraph 2 which says "the release or threatened release of which causes the incurrence of a response cost." I understand that concern. On the other hand, I would not be satisfied if you would strike that altogether. In other words, any release, because the words could be read very strictly. Now, we want this bill, the gentleman and I agree. Where we have language here, we want it read strictly, which means any release whatever, even that which did not cause any evironmental damage would then lose you the defense. So I can see his problem with the response cost, but I would not want there to be a truly harmless provision that we could have. So maybe we could negotiate some language in the middle there.

Mr. ECKART of Ohio. If I can reclaim my time, what I would rather do, if we can get to the point of accepting this amendment with that change, I would rather err on the side of being conservative, that there will be as few releases as possible in the innocent landowner provisions, erring on the side of maximizing the environmental protection and limiting the use of this landowner liability because I think there will be greater protection to the health and environment. I think there is some doubt that you could have a big release that does not incur response costs, yet you say there could be a de minimis release which would preclude the liability from an effective affirmative defense from being raised.

Mr. FRANK. It looks like we may

not be able to reach agreement. I agree that we should err on the side, if we err at all, of conservatism in this regard. I think this is already fairly conservatively drafted. If we simply struck altogether what the gentleman is proposing, we would have no amendment left at all, because if you disturb anything at all, you would have a serious problem and you would lose the benefit of this amendment. I think it is pro-Superfund to see that purely innocent people are not swept up under the restrictive provisions.

Mr. DINGELL. Mr. Chairman, will the gentleman from Ohio yield?

Mr. ECKART of Ohio. I yield to the chairman.

Mr. DINGELL. I really feel that this would be helpful. If the gentleman could accept the suggestion made by the gentleman from Ohio, I have every reason to believe I could arrange to get the amendment accepted and would urge the gentleman to accept it.

Mr. FRANK. Will the gentleman yield?

Mr. ECKART of Ohio. Yes; I yield to the gentleman.

Mr. FRANK. Well, I thank the gentleman, but I can count, too. I am not sure the gentleman can arrange to have it defeated without that. I am not sure. I did try to talk to people earlier about this amendment. No one wanted to talk to me about. It was a little bit like trying to negotiate with the Polish Diet of 1870 where there was a unanimous veto. Now, what the gentleman from Ohio has proposed guts the amendment, because if you have any release whatever under this thing, if a gas tank punctures and spills on to a rock, that is a release, and we could have problems. That is not a reasonable offer of a compromise.

Now, if you had been shown some broad support here in the House, and I would be willing to talk about something reasonable; I was even more willing to talk about something reasonable about an hour ago when I asked these gentleman if they wanted to talk to me about it, and none of them did.

Mr. ECKART of Ohio. Mr. Chairman, I would just say that I have a particular problem with the amendment. I think it poses a dangerous erosion in the joint and several liabilities section. There is a difference, a dramatic difference, between providing for a pre-suit position before there is an establishment of liability under the de minimis settlement provision, which restates this language, as opposed to creating an affirmative defense in the strict joint and several liabilities area.

The problem, very simply, I submit to the Members of the Committee, is that there are probably only a few, very narrow sets circumstances—2, I am advised—to which this could apply. I am not prepared at this point in time to pass a single, very narrow, special interest escape clause to a very important, strict joint and several liabilities provision that I think needs to be in place, given the fact I think this measure is covered under subparagraph (g), under de minimis settlements, the PRP could do it.

Mr. KINDNESS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I wish to speak in support of the amendment for the reason that we have probably just heard the most eloquent argument for the amendment in the remarks of the gentleman just in the well. If we are to have liability that is based upon an unreasonable premise, that is, no wrongdoing on the part of the person held liable, we ought to at least be careful where we place that liability, upon whom we place that liability. If we re going to be selective about whether we are going to go by right and wrong and we say, "No, we are going to have strict liability, joint and several, for all time, frontwards and backwards," let us at least not take the innocent landowners and put them to the task of paying for the release that is referred to in this amendment.

☐ 1850

I would like to give you an example that just came to my attention this afternoon. I am not really at liberty to disclose the location of this one, but a volunteer fire department is one who would be caught in the situation that exists in my district.

There is a distinct liability on the part of someone and some aggregate number of people, but actually the present owner of the land is a volunteer fire department that had no idea that the site had been used for a fill in the past and contained hazardous substances, a volunteer fire department that has no assets with which to respond, but consider that whatever assets they have are devoted to protecting the community from fires and other emergencies.

I think that might help to exemplify the kind of thing we are talking about.

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield?

Mr. KINDNESS. I yield to the gentleman from Kansas.

Mr. GLICKMAN. First of all, I would say that the gentleman and I share the role as the chairman and ranking minority member on the Judiciary subcommittee of jurisdiction. The gentleman from Massachusetts [Mr. FRANK] talked about this amendment in subcommittee. We did not offer it. I do not think he offered it there because of jurisdictional concerns.

I do not think it is particularly unreasonable. I think that somebody who buys a piece of ground in good faith, without actual or constructive knowledge, that is, any reasonable cause to believe whatsoever that any of these criteria were on the land, that it was ever used for toxic waste-dumping purposes, ought to have this as a defense. Besides, you have to prove each one of these things by a preponderance of the evidence, anyway. So the burden is against you. You have the burden to prove these kinds of things.

I do not see this as a major inroad into the bill. I do not think it affects joint and several liability at all. I am strongly supportive of that concept.

So I would urge my colleagues to adopt the Frank amendment.

Mr. KINDNESS. May I ask the gentleman to apply his legal expertise to this question: In the absence of Mr. FRANK's amendment, applying the circumstances artificially to the Love Canal situation, would not this apply to the individual homeowners of the Love Canal area?

Mr. GLICKMAN. I would say that conceptually it would apply to a homeowner with respect to any kind of toxic waste site that is underneath that land, and that could be Love Canal. That is clearly not what we are getting at here.

Mr. KINDNESS. But it is the type of situation that does deserve protection, an innocent purchaser, who ought not to have any liability.

Mr. GLICKMAN. Now, what Mr. ECKART said has some truth. He said that the de minimis provisions in the bill, that it, allowing a release for a de minimis generator, a small generator would take care of this particular case.

The problem is, it does not really take care of it because you are in the litigation, and then you would have to be settled out of the litigation. This offers a defense with somebody who is truly an innocent bystander, and that is the difference between utilizing that methodology and this one.

Mr. KINDNESS. Indeed, and beyond that, as the gentleman would agree, I am sure, the de minimis clause does not take care of the situation where it is a large problem, but you still have an innocent landowner, purchaser of the land.

Mr. GLICKMAN. That is correct.

Mr. KINDNESS. So I would certainly urge the adoption of the amendment.

I yield to the gentleman from California.

Mr. BERMAN. I thank the gentleman for yielding, and I agree with what he has said.

The de minimis provision does not take care of the situation of the innocent landowner, for the reasons the gentleman said, and, in addition, because it still is a discretionary matter with the EPA. When you have a truly innocent party at arm's length, acting in good faith, who had no actual or constructive knowledge, then it is not a matter of a de minimis contributor, it is truly a matter of an innocent landowner. This is not an exemption from liability. It is an affirmative defense which he has to prove by the preponderance of the evidence, and I might say that the organizations which have been——

The CHAIRMAN. The time of the gentleman from Ohio (Mr. KINDNESS) has expired.

(On request of Mr. BERMAN and by unanimous consent, Mr. KINDNESS was allowed to proceed for 30 additional seconds.)

Mr. KINDNESS. I yield further to the gentleman from California.

Mr. BERMAN. I might say that the organizations which have been pushing for the strongest possible Superfund bill have looked at this amendment and have indicated that they have no problem with it.

I share the gentleman's support for this amendment.

Mr. ROE. Mr. Chairman, I move to strike the requisite number of words.

If I could have the attention for a moment of my colleagues, as we go through this torturous trail inch by inch, which is getting the attention it is tonight, there is a cause that is just. We in this legislation as we have written this legislation in both committees have provided different mechanisms where people who are not involved in liability should not be charged with liability. We relieved the response action contractors, which was the right thing, and we said to them that they should not be subject to joint and several liability if they were the contractors. They are the good guys, they are the white hats, they are going to clean it up, they should not be in the chain. The architects and engineers, we came back and we relieved them of liability, of joint strict, and several liability. We said, "You should not, if you are the architect, you are the doctor, you are the surgeon, if you are going to perform the operation, and because you perform the operation you are guilty of a crime." So we have made this progress in this bill, which is sensible and just, because we are looking to expedite progress, to get the job done.

Now, in addition to that, in this legislation we have recognized exactly the point the gentleman is saying. We came back in this legislation and we provided on page 120, we make a provision that on any real property owned by the United States on which any hazardous substance was stored for 1 year or more, known to have been released or disposed—we have made all kinds of provisions in the bill to protect the citizen who buys property from the Federal Government where the hazardous waste material has been placed in the ground, and so forth, and so on.

Here we are coming back and we are debating a point of view where an innocent citizen buys a piece of land, and we are simply coming back and saying, "Should that innocent citizen, or every citizen in the country, if there is some release that takes place and poisons the ground water underneath a private piece of property which was 20 miles away from where the toxic waste material was, is a person who buys a piece of property and drills a well obligated then for all of the joint and several responsibility of somebody's waste?"

The point is ridiculous.

What is just and is right and is fair is what this bill is about. I would respectfully suggest to my colleagues and the members of the coalition and the different committees that are working, this cause is just on this amendment.

Mr. ECKART of Ohio. Mr. Chairman, will the gentleman yield?

Mr. ROE. I yield to the gentleman from Ohio.

Mr. ECKART of Ohio. If I may, on the time of the gentleman from New Jersey, I would like to suggest, in order to address the question about the fact that response must occur, would be to ask unanimous consent to delete the words "the incurrence of a response cost," and to replace them with the phrase "significant environmental hazard," so that it will read, "* * * which causes significant environmental hazard."

Mr. FRANK. Reserving the right to object, Mr. Chairman—

Mr. ROE. I believe it is my time, Mr. Chairman.

I will yield to the gentleman.

Mr. FRANK. I thought the gentleman made a unanimous-consent request.

Mr. ECKART of Ohio. I did not propose. I said I was willing.

Mr. FRANK. I thank the gentleman for yielding.

Let me say that I appreciate the suggestion of the gentleman from Ohio. That sounds reasonable to me. We were talking about it. I would say this: I would hope we could go ahead with that kind of language, with the understanding that it is always hard to work things out exactly here. When we get to conference, maybe that has to be perfected some way.

The gentleman raised the point, in my discussion, which I thought was reasonable, about the response cost. That sounds like better language, and maybe we can even perfect it better in conference.

So with that, I will certainly agree to it.

Mr. ECKART of Ohio. Mr. Chairman, I would like to propose a unanimous-consent request.

Mr. Chairman, I ask unanimous consent to change the amendment in lines 10 and 11 by striking the expression "the incurrence of a response cost," and replace it with "significant environmental hazard;"

Mr. WAXMAN. Mr. Chairman, I reserve the right to object.

Mr. ROE. Mr. Chairman, I believe it is my time, but I will yield to the gentleman from California.

Mr. WAXMAN. Mr. Chairman, I assume there is a unanimous-consent request pending.

Mr. ECKART of Ohio. That is correct.

The CHAIRMAN. Does the gentleman yield?

Mr. ROE. Yes, I yield to the gentleman from California.

The CHAIRMAN. The gentleman from New Jersey yielded for the purposes of the unanimous-consent request being made; is that correct?

Mr. ROE. No, I had not, but I will now, if that would expedite the matter and be done with it.

The CHAIRMAN. It is going to expedite it.

Mr. ROE. Then I yield to the gentleman from California.

The CHAIRMAN. The gentleman from California [Mr. WAXMAN] reserves a right to object.

The Chair recognizes the gentleman from California under his reservation of objection.

Mr. WAXMAN. I thank the Chair.

Mr. Chairman, "significant environmental damage" means——

Mr. ECKART of Ohio. "Significant environmental hazard."

Mr. WAXMAN. "Significant environmental hazard" has a different meaning than "incurrence of a response cost."

Now, we have heard the purpose of this amendment as explained by the gentleman from Massachusetts [Mr. FRANK]. We want to protect, as he has put it, the innocent landowner. And I am concerned that the choice of that phrase might be interpreted in a different manner than was intended by this proposal, and the point that was just raised a minute ago was that should that be the case, where those words have a different meaning than what was intended and would frustrate the importance of protecting an innocent landowner, is it the gentleman's intent in conference to agree to accomplish the objectives of the gentleman from Massachusetts, as he has explained his amendment?

Mr. ECKART of Ohio. If the gentleman will yield to me, the answer is, yes, based on our discussion that neither one of us wants to cause undue environmental jeopardy.

The CHAIRMAN. The time of the gentleman from New Jersey [Mr. ROE] has expired.

Mr. FRANK. Mr. Chairman, I reserve the right to object.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

Mr. WAXMAN. Mr. Chairman, reserving the right to object, I yield to the gentleman from Massachusetts [Mr. FRANK].

The CHAIRMAN. The gentleman from California [Mr. WAXMAN] is yielding to the gentleman from Massachusetts [Mr. FRANK], under his own reservation.

Mr. FRANK. Mr. Chairman, let me say that having discussed this with the gentleman from Ohio and the gentleman from Michigan, I appreciate their spirit of trying to improve my amendment. I am confident that if we adopt it with this language change we will go to conference and adopt language that will serve all of our purposes, so I hope it is accepted.

Mr. ECKART of Ohio. If the gentleman will yield, I will say that——

The CHAIRMAN. The gentleman from Massachusetts does not have any time. The gentleman from California [Mr. WAXMAN] has the time.

Is there objection to the request of the gentleman from Ohio [Mr. ECKART].

[Mr. WAXMAN addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.] .

Under those circumstances, Mr. Chairman, I withdraw my objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The CHAIRMAN. The Clerk will report the modification.

The Clerk read as follows:

Beginning on line 10 strike out "the incurrence of a response cost;" and insert "significant environmental hazard."

The text of the amendment, as modified, is as follows:

Amendment offered by Mr. FRANK, as modified: Page 39, line 24, strike out the closing quotation marks.

Page 39, after line 24, insert:

"(m) LANDOWNER LIABILITY.—There shall be no liability under subsection (a)(1) of this section for a person otherwise liable who can establish by a preponderance of the evidence that he—

"(1) is the owner of the real property on or in which the facility is located;

"(2) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility, the release or threatened release of which causes significant environmental

hazard;

"(3) did not contribute to the release or threat of release of a hazardous substance at the facility through any act or omission; and

"(4) did not acquire the property with actual or constructive knowledge that the property was used prior to the acquisition for the generation, transportation, storage, treatment, or disposal of any hazardous substance.".

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts [Mr. FRANK], as modified.

The amendment, as modified, was agreed to.

The CHAIRMAN. Are there further amendments to title I?

AMENDMENT OFFERED BY MR. DAUB

Mr. DAUB. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DAUB: Page 39, after line 24, insert the following new subsection:

(h) DEFENSE AND LIMITATION ON LIABILITY.—

(1) IN GENERAL.—Section 107 of CERCLA is amended by adding at the end theroof the following new subsection:

"(m) ADDITIONAL DEFENSE.—There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of any hazardous substances, which caused the incurrence of response costs at any site, does not include any hazardous substance with respect to which such person had any relationship described in subsection (a).

"(n) LIMITATION ON LIABILITY.—In any case in which a person liable under subsection (a) establishes by a preponderance of the evidence that—

"(1) at any site at which response costs are incurred as a result of the release or threat of release of any hazardous substances, the hazardous substance or substances with respect to which such person had any relationship described in such subsection is not physically mixed with hazardous substances with respect to which other persons had any relationship;

"(2) such person has taken or is in the process of taking a removal action with respect to the hazardous substance or substances with respect to which such person had such relationship;

the liability of such person under subsection (a) shall be limited to the costs of such removal action.".

(2) CONFORMING AMENDMENT.—Section 107(a) of CERCLA is amended by striking out "subsection (b)" and inserting in lieu thereof "subsections (b) and (m)".

Mr. DAUB (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore (Mr. MOAKLEY). Is there objection to the request of the gentleman from Nebraska?

There was no objection.

Mr. DAUB. Mr. Chairman, throughout the 200 years of American jurisprudential experience, and centuries of British legal history, for that matter, a connection between a person's act and damages incurred had to be established for liability. This principle of causation requiring a connection between an act and damages has been a hallmark of common law simply because it makes common sense. An actor cannot protect himself or predict the outcome of a course of action without knowing what the rules are and when they are broken. He cannot protect himself by making his conduct conform to a prescribed set of rules, and the cannot protect himself with insurance because there is no rational limit on liability.

A number of courts have indicated that this vital connection between a person's conduct and harm incurred may not have to be established.

The Federal Government has urged that Superfund permit liability without proof or claim that a person's waste deposit contributed in any way to a hazardous release. In other words, a drycleaner who used solvents and when found in new drums in a corner of a waste disposal site may be forced to contribute to the cost of cleaning up someone else's leaky drums elsewhere on the same site.

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As you can imagine, this set of liability rules is a nightmare for companies trying to get insurance for their businesses, particularly small businesses. Holding persons responsible for the actions of others means their current insurance policies will not cover them and they will not get coverage in the future.

Insurers cannot be asked to cover risks for which no premiums are collected and no projected loss forecasts can be made. If they do, the industry's ability to write coverage for homes, cars, boats, workers' compensation, and all other business lines are threatened.

My amendment is a small step toward ensuring a connection between conduct and damage in a very narrow

sense. Let us remember that Superfund liability is being imposed retroactively. A business which has complied with all relevant rules and regulations at the time paid handsomely for waste storage and its waste does not even spill, still finds itself liable from a law put into effect long after wrongful actions by others may have taken place.

My amendment is not a comprehensive revision of Superfund's liability scheme, it is not going as well to totally resolve the insurability dilemma in my opinion. But it will put some rationality to the law. It is a modest step in the right direction. So that this amendment would result in a generator who can show that all material he has placed at a site did not contribute to a release, for example, his barrels have not leaked, would not be liable for the release of other materials by others at that same site.

It is important to note that the burden of proof on the defendant generator who must establish his noninvolvement with other hazardous releases by a preponderance of the evidence does not change. The Government as well is not required to prove anything new.

We must ensure at a minimum that courts recognize the modest link this amendment provides between culpable conduct and financial responsibility. Mr. Chairman, let us not allow the courts to so hastily discard centuries of jurisprudential tradition which has always found the need for the principle I am talking about.

Let me indicate that this is on the merits very much like the Frank amendment which has just been accepted. It would seem to me that all of the statements in support of Mr. FRANK's amendment, particularly, may I say, the very eloquent statement by Mr. ROE, about this kind of thing would apply to the attempt I am asking this committee to make by accepting this amendment.

I would be happy to answer any questions that any member of the committee might have at this time to expedite matters.

Mr. GLICKMAN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I want to ask the gentleman from Nebraska some questions. Is this what we would call a fingerprinting amendment which is an attempt to try to split up and divide the wastes and so if you prove that waste was yours you would be liable?

I yield to the gentleman for his response.

Mr. DAUB. That is not the case. I do not want to change current law, but I do know that courts are in conflict over connection. If in fact you have, like in the last amendment, a piece of land after acquired, and you did not know there was a problem, and we now have accepted that that person should not be held liable. In the case of someone who was properly stored or their transporter has caused to be properly stored, a material that might be otherwise subject to the act at a targeted site for cleanup, and those barrels do not leak, and they have not caused any problem, that defendant, alleged defendant generator ought to be able to come in, prove that, and pay for removal of those barrels.

Mr. GLICKMAN. It would seem to me that this provision would encourage people to litigate; that settlements would be very difficult to achieve ever in these cases. That most cases would go to trial and that this would be contrary to all of the settlement encouragement provisions of the bill. Let us take a hypothetical for a minute.

You dump 5 barrels of benzene into a waste disposal site that leaks, but let us say that the site is pretty bad but the benzene does not leak; something else actually leaks at the site because the site is not a very good site. Well, we would be spending hundreds and hundreds of hours, you would be pulling yourself out of liability. The EPA could never get any settlement of that situation because everybody would be in court proving it was not exactly their hazardous material that leaked. So it would be very counterproductive.

I yield to the gentleman.

Mr. DAUB. Quite the opposite is the case.

Our goal is the same; that that business who has the barrels of benzene who would still have the burden of proving those barrels did not leak or cause any damage to that site and still be responsible once that is determined for paying to get them out of there, ought to have protection under the law, and certainly there is still joint, strict and several liability for all those did cause damage.

Let me further say one other thing. That is that what I seek to do by the amendment is to extricate, that is, to expediture the opportunity of that noncontributor to get out and not be involved in the lawsuits and exposed to the paperwork and the liability and the threat that hangs over that person's head because they may be held accountable after they have not contributed.

Mr. GLICKMAN. Let me just say that I know this amendment is offered in good faith, but this is significantly different from the Frank amendment that was offered before. That was a piece of land bought by an innocent purchaser with no idea that there had ever been any disposal whatsoever historically on that site.

What you have here is people who have been dumping, they have been dumping into a site which leaks; that is a Superfund site. That somebody has to clean that site up. Now you will have every one of the dumpers coming in and alleged that they had nothing to do with the leak at all. You will spend hours and months and years of litigation that will prevent any sort of settlement, any sort of disposition of the problem other than under a very litigious situation.

So I think what this amendment basically does is to disturb the parts of the bill that lead toward settlements and lead toward disposition other than in a litigative situation. I think what the gentleman's amendment does, it is offered in good faith, but what I think it does is encourage an incredible lawyers' relief act in this country. It will encourage massive amounts of litigation for people to prove themself noncontributing in an almost impossible type of situation.

I yield to the gentleman.

Mr. DAUB. Very briefly, I am sure the gentleman would not want to cause ultimately liability to someone who did not cause one drop of pollution in a toxic waste site that is targeted. Further, that that expense to which that individual you referred to might have to go could be in the end, even if costly, far less costly, allowing that person to continue to get insurance by summary judgment action if no one comes forward to disprove his allegation that he did not contribute to the site, then he is off the hook and I think he ought to be.

Mr. GLICKMAN. Let me just make two points. One is that there are de minimis provisions in this bill which will allow people to pull themselves out if they contributed very little in terms of quantity or quality into this kind of mess and I think that that is very important.

The fact of the matter is if you contribute X material into a waste site, and it leaks, and Y material leaks out of the waste site, it may in fact have been because of the X material that was dumped in the site that caused the entire leak to occur. And by your kind of amendment you make it impossible for that person to ever become part of the settlement process.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am trying to understand the amendment offered by the gentleman from Nebraska. I would ask the gentleman, does this exempt a person from liability under the bill if he has deposited hazardous waste on the site?

Mr. DAUB. If the gentleman will yield, I would say no.

Mr. DINGELL. Does this exempt the person from liability if he has contributed substances to the site or has had activity on the site?

Mr. DAUB. Only in the event he can prove that none of that material has contributed because of its deposit and which way it was deposited at the site.

Mr. DINGELL. How about if his actions have contributed to the release of the substance on the site?

Mr. DAUB. I would think this amendment would not let him off the hook.

Mr. DINGELL. I must confess with regret I do not see in here that the amendment does not exempt a person under those circumstances.

Mr. DAUB. Will the gentleman yield?

Mr. DINGELL. I will be delighted to yield to the gentleman.

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Mr. DAUB. The alleged defendant generator, would the gentleman not agree, would have to establish by a preponderance of the evidence that the release or the threat of the release of his hazardous substances would have to have had some causation or connection with the condition of the dump site?

Mr. DINGELL. Now the gentleman is coming to the point that we are talking about.

A group of people have deposited hazardous wastes on the site. One of them has put hazardous waste on the site which is being released; another has put hazardous waste on the site which is not being released. The one who has put hazardous waste on the site which is not being released but which is present there does not incur any liability on the part of that particular depositor if he has not caused it to be released on the site, in other words, if the substance is still under containment; is that correct?

Mr. DAUB. That is correct.

Mr. DINGELL. So what this amendment does, then, is it releases a person who has put hazardous waste on a hazardous-waste site when that depositor simply has put hazardous waste on the site which is either not being released at the time or which is not causing the release of other substances.

Now, there is more to the amendment than that. The gentleman's amendment also deals with additional limitations on liability. I have been referring to additional defenses. On the additional limitations on liability, the amendment goes on to say this:

> In any case in which a person liable under subsection (a) establishes by a preponderance of the evidence that—
>
> "(1) at any site at which response costs are incurred as a result of the release or threat of release of any hazardous substances, the hazardous substance or substances with respect to which such person had any relationship described in such subsection is not physically mixed with hazardous substances with respect to which other persons had any such relationship;

So what this says is that even though a person has put a hazardous waste on the site, if it has no relationship to the deposit of hazardous waste by another person which is escaping, then that depositor who has put the hazardous waste there which is not escaping escapes liability; is that the meaning of the section?

Mr. DAUB. That is the meaning of the section.

Mr. DINGELL. Now, the problem that I have with the amendment offered by my good friend, the gentleman from Nebraska, is that we have all these hazardous-waste sites around the country. If the gentleman were seeking to release a person who has not deposited any hazardous waste but who had just, let us say, put an innocent substance there like paper or tin cans which had been used for holding grapefruit juice or tomato juice or something of that kind, I really would not have a significant problem.

But the problem is that you now have a site which is an active site, one which is leaking hazardous waste. In many instances the identity of the person who put the hazardous waste there cannot be identified by the character of the drums or the deposit because these sites now are old and the hazardous-waste containers have rusted and their identity is now lost. One 55-gallon drum looks just like another 55-gallon drum, and as a consequence you have all these hazardous-waste containers on the site.

The CHAIRMAN pro tempore (Mr. Moakley). The time of the gentleman from Michigan [Mr. Dingell] has expired.

(By unanimous consent, Mr. Dingell was allowed to proceed for 2 additional minutes.)

Mr. DINGELL. Mr. Chairman, to continue, this second depositor is now able to say, "Well, I didn't put any of this there. I put hazardous waste there, but none of this hazardous waste that I put there is leaking, and, therefore, I ought not be liable, and I ought not have to pay a share of the cost of cleanup."

We remember that once the cleanup starts, you have hazardous waste that is leaking and you have hazardous waste that is not leaking. So you absolve this individual from his proper share of liability for the cleanup of the hazardous waste he has put there simply because he has established an affirmative defense that none of what he has put there is leaking.

You have also absolved him of his joint and several liability under the statute. That, of course, creates an additional problem in terms of litigating out the cleaning of these sites, and it also makes additional difficulties for the cleanup and paying the cost of litigation. One of the things the bill before us is trying to do is to avoid the cost of litigation and to assure that the litigation goes forward.

Now, I will observe to my good friend, the gentleman from Nebraska, that if a person has made a deposit of hazardous waste at a site that has been covered by deposits by a large number of persons or any number of persons, there is a mechanism elsewhere in the bill whereby the liability of the several parties can be adjudicated among themselves by action taken before the court once the matter is joined.

I am sure the amendment is offered in the best of good faith by the gentleman from Nebraska, but regrettably, it has the practical effect of allowing a person to simply cause himself to be absolved from the deposit of waste and cleanup simply by reason of the fact that the waste containers are not leaking on the site. They might present as much hazard as any leaking container a day, a week, a month, or a year hence, but they then do not have to be cleaned up and there is no liability that attaches to the depositor of those particular containers.

The CHAIRMAN pro tempore. The time of the gentleman from Michigan [Mr. DINGELL] has again expired.

(By unanimous consent, Mr. DINGELL was allowed to proceed for 2 additional minutes.)

Mr. DAUB. Mr. Chairman, will the gentleman yield further?

Mr. DINGELL. I yield to my friend, the gentleman from Nebraska.

Mr. DAUB. Mr. Chairman, I am very concerned that this be done correctly. I know that it is not a very clear argument to say that the law now provides for the circumstances I am trying to correct. I am not sure the law is clear, nor that the drafting of the bill before the committee is clear, but let me ask the gentleman a couple of questions based upon his argument.

Does the gentleman agree that there is the possibility that harm is divisible?

Mr. DINGELL. There is a possibility that harm is divisible; there is a possibility that it cannot be divided. We really do not know because of the character of these sites and the enormous difficulty of identifying the depositor or which of the containers or which of the depositors created the mischief, and we know that that mischief may occur the day after tomorrow.

Mr. DAUB. So the gentleman would agree that harm could be divisible?

Mr. DINGELL. I have not said that it is divisible. I have said that it could be divisible.

Mr. DAUB. Would the gentleman agree, then, that joint and several liability for that particular event that could be divisible would not be attached?

Mr. DINGELL. I happen to support the concept of joint and several liability because elsewhere in the law there is a provision which enables the parties who have made the deposits at the hazardous waste sites later to be identified in the course of the proceeding and to share out the costs in an appropriate fashion, according to the law before the judge.

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I now yield to my good friend, the gentleman from Kansas.

Mr. GLICKMAN. Mr. Chairman, I would just like to reinforce what my colleague, the gentleman from Michigan, said.

In the contributions sections of the bill, it says that once liability is established the court may use its equitable powers to apportion costs among liable parties, taking into account relevant equitable considerations. I think that deals with this issue of separating out the relative culpability of the parties about as much as we possibly can do.

Mr. DAUB. Mr. Chairman, will the gentleman yield further on that point?

Mr. DINGELL. I am glad to yield to the gentleman from Nebraska, although my time is running out.

Mr. DAUB. Very quickly, on the point the gentleman from Kansas just raised, the fact of the matter is, though, that this particular defendant generator has been engaged in that suit throughout the whole course of the litigation, he has had to incur all the costs and undergo all the burden and probably sustain the loss of the additional ability to gain liability coverage in the conduct of his business, and what I seek to do is resolve that problem earlier in the process.

Mr. DINGELL. With all due respect, Mr. Chairman, I must oppose the amendment.

Mr. ROE. Mr. Chairman, I move to strike the requiste number of words.

Mr. Chairman, I have studied this amendment, now that things have settled down a bit and as we are getting this fine debate under way.

I say to my distinguished friend, the gentleman from Nebraska, that I realize what he is trying to do. Again I say his cause is just and his cause has merit. But we have got to visualize the isolation of three or four barrels of material, although some of them legitimately may not be leaking, or whatever, mixed into a whole morass of material. Now, are we going to apply a rule? I hope the gentleman from Nebraska is with me.

If we are going to be providing a generic response in our concern with equity and fair play, then it has got to relate to something. In effect, this particular amendment may be helpful in a smaller isolated type of area, but just in a smaller isolated type of area. But in the order of magnitude of what we are dealing with in this whole bill, a generic fix, if you like, or a generic response of this type would mean fundamentally that every single part and piece would be heard and everyone will have a chance to request and say, "Well, I am not really responsible. I put two drums in. One drum got caught up with a little acid. This one is leaking, and this one didn't leak."

Who is going to determine that, and how is it going to be studied out in this great morass that we are dealing with?

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Mr. DAUB. Mr. Chairman, will the gentleman yield on that?

Mr. ROE. Of course.

Mr. DAUB. Indeed, Mr. Chairman, the defendant-generator is going to have to prove that. I do not change the approach that the committee bill or the current law takes to require the alleged contributor to that site that has been identified for cleanup, but I do say to the gentleman that if it was one or two or four barrels in this huge moral of ugliness that we are seeking to assure the neighbors that we are going to clean up, in fact that person if they did not contribute still ought not to be liable at some point in the procedure.

Mr. ROE. Well, if they did not contribute, there is no way of really telling that unless they can go in and pick up their five drums and say in this morass, "Here is my five drums. I am not the bad guy." They have got to move it someplace else.

Mr. DAUB. I do think we ought to give them that chance at some point in the procedure, that is my point.

The CHAIRMAN pro tempore (Mr. MOAKLEY). The time of the gentleman from New Jersey [Mr. ROE] has expired.

(By unanimous consent, Mr. ROE was allowed to proceed for 2 additonal minutes.)

Mr. ROE. We would have to give them time at that point. We would have to go into every site.

I think the gentleman's cause is just, but believe me, I do not think this does the job. I think we have to object to the amendment the way it is written at this point.

Mr. LENT. Mr. Chairman, will the gentleman yield?

Mr. ROE. I yield to the gentleman from New York.

Mr. LENT. Mr. Chairman, I reluctantly have to agree with the gentleman.

I say to the gentleman from Nebraska that his amendment does have some merit on its face, but the gentleman from New Jersey is absolutely correct. For better or worse, we have decided to maintain the strict joint and several liability scheme which the courts have found exist in this bill.

The second part of the gentleman's amendment would chip away at that idea by legislatively apportioning liability under a certain set of circumstances.

The courts and the EPA, of course, can do this in an individual case when they have all the circumstances before them at their discretion. I do not think we can legislatively carve out a certain type of exemption to the overall joint and several scheme that we have heretofore followed with respect to the Superfund.

So, regrettably, I have to vote against the amendment.

Mr. MOLINARI. Mr.Chairman, I move to strike the requisite number of words.

Mr. Chairman, I reluctantly rise to oppose the amendment of my good friend, the gentleman from Nebraska [Mr. DAUB].

What we are talking about here basically is the guts of the Superfund legislation that we have been dealing with now for 5 years. This and other amendments that are going to tamper with the liability sections that we have dealt with are very risky. It is the heart of the Superfund Program.

Yes, on its face it appears that this would not have a great impact on it, but I am deeply concerned. I can see many circumstances where this would open the door for joint tort feasors; for example, somebody is delivering a drum to a site and while dumping it on a site they rupture other drums that are on that site. How do you prove that that individual ruptured those drums? How do you prove the synergistic effect of the mix that your chemicals have with the other chemicals that may be onsite?

When we start to chip away at that liability, we are chippng away at the whole program. It is the guts of the program. If we start tamering with it, we are going to create a system that is not going to work.

If you look at EPA and what it has done over the years, there has been a lot of criticism levied in its direction. I do not think enough credit has been given to them for the good that they have done. The good that they have done in negotiating settlements is due to the liability features that we have in the law today.

I think we should resist this amendment and any others that tend to disturb the liability provisions that we have today.

Mr. DAUB. Mr. Chairman, will the gentleman yield?

Mr. MOLINARI. I am glad to yield to the gentleman from Nebraska.

Mr. DAUB. Mr. Chairman, I am concerned as well. The gentleman raises a good point about the trucker or transporter that takes a drum to a site and maybe in some way ruptures the container as it is being deposited or moved around on the site, unbeknownst to the person who hired that contractor or conveyer to move the drum from the place of origination to the place of site containment.

It seems to me, as a matter of fact, what we do is that we say to the generator, "Look, be sure that when it moves and it is deposited in the site that it is safely contained. You are going to be responsible for following that all the way to the site and if in fact it is laid to rest and ends up being safely contained, you will be more certain under the law of not being responsible if somebody else comes along and messes up that site that your stuff gets into and you didn't know it in the first place."

It is my intention in fact to get quite the opposite result by this amendment than how the gentleman characterizes its intention.

Mr. MOLINARI. Reclaiming my time, Mr. Chairman, I do not mean to misinterpret what the gentleman from Nebraska [Mr. DAUB] is saying; but what I am suggesting is that under the gentleman's language "establishing by a preponderance of the evidence," it would be very difficult in some circumstances, dealing with the sensitive and complex subject matter, for EPA and Justice to be able to prevail in litigation.

I think we are opening the door to real problems.

For that reason, I reluctantly oppose the gentleman's amendment.

Mr. BROWN of Colorado. Mr. Chairman, will the gentleman yield?

Mr. MOLINARI. I am glad to yield to the gentleman.

Mr. BROWN of Colorado. Mr. Chairman, the gentleman from New York raised I think an important point and that is the problem involved in proving an item. If I understand the amendment of the gentleman from Nebraska, though, he places the burden of proving that the particular defendant is totally innocent on the defendant. So if I am interpreting the gentleman's amendment correctly, the EPA does not have the burden of proving it. Rather, the burden is on the defendant. Would the gentleman agree with that assessment?

Mr. MOLINARI. On its face, yes; but take it to the courtroom now and I suggest that we are dealing with a different subject matter whatsoever.

For the EPA now to come in to face these innumerable legal contests that I think are going to arise if this amendment were to pass, you are putting them to a test, I agree with the gentleman from Kansas [Mr. GLICKMAN] that you are going to encourage a great deal of litigation with the enactment of this kind of amendment.

Although on its face it appears to be harmless, I think it is quite to the contrary. You are opening the door. Those who have good lawyers and have financial access to top attorneys, will be putting a great burden on the EPA that I do not think is justified or should be in place, if we want to get the job done; the job that we set out in enacting the Superfund legislation.

Mr. DAUB. Mr. Chairman, if the gentleman will yield further, I would say to the gentleman that those who have good evidence ought to be exonerated, rather than those who have good lawyers ought to get off.

Mr. BROWN of Colorado. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to ask the gentleman from Nebraska about his amendment.

Some important points have been made about the gentleman's amendment. I would hope the gentleman would be willing to clarify some of those points with the body.

First of all, let me ask the gentleman, does his amendment provide any exemption for someone who is not totally innocent of contributing to leakage on the site?

Mr. DAUB. There is no possibility of someone who in fact contributes or there is reasonable evidence presented that that person's materials so stored contributed to the pollution in that dump site could get off under this amendment.

Mr. BROWN of Colorado. A point has been raised about the difficulties of proof in court. May I inquire, under the gentleman's amendment, who has the burden of proof?

Mr. DAUB. With the person who is seeking to be relieved of the joint, strict, and several liability, of those who caused the pollution, the so-called generator of the alleged hazardous materials.

Mr. BROWN of Colorado. The gentleman is telling me that the person has to prove he is innocent?

Mr. DAUB. That is correct.

Mr. BROWN of Colorado. Or he is held to the liability under the law?

Mr. DAUB. Of those who otherwise are found liable for the dangerous condition of that dump site.

Mr. BROWN of Colorado. It has been pointed out that the EPA in this process is sometimes willing to negotiate a settlement with someone who has not been a major contributor. What is the gentleman's assessment of the cost that would go to a small company that is totally innocent? What is their cost in negotiating through their attorneys a settlement?

Mr. DAUB. Well, I do not want to paint the "what-if" scenario, because the opponents to this piece of legislation are really painting the "what-if" scenario.

I want this to be very strictly interpreted. I am principally concerned about two kinds of costs on the innocent party that may be involved in suggesting they ought to pay for a cleanup for something they did not cause; that is the cost of defending and the cost of their continuing premiums to have liability insurance to cover them in fact when they may be found liable for having contributed some kind of toxic material to a dump site or caused harm to health or to personal property otherwise; so I am very concerned about two kinds of costs.

I want to provide a mechanism by which folks not contributing one single ounce of hazardous material to a site can in a reasonable way prove they did not cause any harm and pay for getting themselves out of their mess.

Mr. BROWN of Colorado. Mr. Chairman, I thank the gentleman.

I would like to make several observations with regard to this amendment. This amendment is a very simple proposition. Are we going to hold people liable that are totally innocent? That is what we have got to face here, someone who is totally, completely innocent, of any wrongdoing, are we going to hold them liable?

I think we have to answer in our own consciences whether or not it is right to take someone who is innocent and make them liable.

I would put it to this body that that is not fair play. Fair play involves taking the people who polluted and caused the problem and holding them responsible. I think we ought to do it, but to take people who are totally innocent and hold them responsible, I think is a travesty. It does not meet the concept of fair play of anyone in this country, not Democrat or Republican, not liberal or conservative, not conservationist, not businessmen, not anyone, to take someone totally innocent and ruin their lives and their businesses when they have done nothing wrong.

There is other observation that I think it is important to note. It has been suggested that it is no problem for innocent people to get out of liability because the EPA will negotiate a reasonable settlement. But, these innocent people have to hire an attorney at great expense to negotiate out settlement with the EPA.

Incidentally, if you have ever borrowed money as a businessman or a businesswoman, you often have to come up with an audited financial statement. An audited financial statement by a CPA in this country will footnote contingent liabilities, if they are significant.

What you are saying is that people who are innocent, who are dragged into these suits, may have to footnote on their financial statements a contingent liability for the cost, because that is what this law provides. It make them jointly and severally liable up to the entire cost of cleanup.

What you are saying is that a small business that is innocent is going to have to note that on their finanical statement. Mr. Chairman, let me remind this body, if you think you can go borrow with a financial statement like that, you have an extraordinary banker.

The CHAIRMAN pro tempore. The time of the gentleman from Colorado [Mr. BROWN] has expired.

(At the request of Mr. MOLINARI, and by unanimous consent, Mr. BROWN of Colorado was allowed to proceed for 2 additional minutes.)

Mr. MOLINARI. Mr. Chairman, will the gentleman yield?

Mr. BROWN of Colorado. I yield to the gentleman from New York.

Mr. MOLINARI. Mr. Chairman, I just would like to make the observation to the gentleman from Colorado that I think there is a difference, we keep using the term innocent, and I would suggest to the gentleman that it is one thing to be innocent and it is another thing to be able to prove by the preponderance of the evidence doctrine that is set up in this bill; so what I am suggesting, you may not be innocent and yet be able to meet the test of the preponderance of evidence as set forth by this amendment.

I think we should be careful in the terms that we use.

Mr. BROWN of Colorado. Mr. Chairman, I appreciate the gentleman's point. As I read the amendment, it is even a tougher test than most might think fair. It is not enough that you are innocent. You lose the presumption that you are innocent and under this amendment you have to prove that you are innocent.

In other words, under normal jurisprudence the prosecutor has to prove that you are guilty and you are presumed innocent.

Under this amendment, you even have the burden of proving your innocence. If we are comparing this to normal jurisprudence, we have to conclude that this is even a tougher test than what we have provided under other circumstances.

Mr. MOLINARI. Mr. Chairman, will the gentleman yield further?

Mr. BROWN of Colorado. Yes, I am glad to yield.

Mr. MOLINARI. Mr. Chairman, I would suggest to the gentleman that, yes, the test may be tough, but when you think about the subject matter, necessarily the test must be tough. If we start to disturb that test, we are in deep trouble, in my judgment.

Mr. DAUB. Mr. Chairman, if the gentleman will yield, let me remind the body, if I could, that we are not dealing here with super-rich large corporations. We are dealing with a pharmacist, we are dealing with the owner of a bowling alley, we are dealing with someone who changes their own crankcase oil, we are dealing with the local garage, we are dealing with small businesses, men and women who work for a living with their hands. They do not have sophisticated attorneys. What they are doing is trying to make this country go and work and what we are imposing on them is liability when they are not at fault.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Nebraska [Mr. DAUB].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. DAUB. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 62, noes 330, not voting 42, as follows:

[Roll No. 433]

AYES—62

Anderson
Armey
Badham
Bartlett
Barton
Bateman
Boulter
Brown (CO)
Broyhill
Campbell
Chappie
Cobey
Coble
Combest
Crane
Dannemeyer
Daub
DeWine
Eckert (NY)
Edwards (OK)
Evans (IA)
Fawell
Fiedler
Fields
Franklin
Goodling
Gradison
Hansen
Hiler
Hopkins
Hubbard
Hyde
Lewis (CA)
Lewis (FL)
Lightfoot
Loeffler
Lungren
Mack
Marlenee
McCandless
McCollum
McMillan
Miller (WA)
Nielson
Regula
Ridge
Ritter
Roberts
Rudd
Schulze
Shumway
Skeen
Smith (NE)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Strang
Stump
Taylor
Vucanovich
Walker
Zschau

NOES—330

Ackerman
Akaka
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Barnard
Barnes
Bates
Bedell
Beilenson
Bennett
Bentley
Cooper
Coughlin
Courter
Coyne
Craig
Crockett
Daniel
Darden
Daschle
Davis
de la Garza
Derrick
Dicks
Dingell
DioGuardi
Dixon
Gingrich
Glickman
Gonzalez
Gordon
Gray (IL)
Gray (PA)
Green
Gregg
Grotberg
Guarini
Gunderson
Hall (OH)
Hall, Ralph
Hamilton
Hammerschmidt
Hatcher

Bereuter
Berman
Bevill
Biaggi
Bilirakis
Bliley
Boehlert
Boggs
Boland
Boner (TN)
Bonior (MI)
Bonker
Borski
Bosco
Boucher
Boxer
Breaux
Brooks
Bruce
Bryant
Burton (CA)
Burton (IN)
Bustamante
Byron
Callahan
Carney
Carper
Carr
Chandler
Chapman
Chappell
Clay
Coats
Coelho
Coleman (MO)
Coleman (TX)
Collins
Conte
Conyers
Donnelly
Dorgan (ND)
Dowdy
Downey
Dreier
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart (OH)
Edgar
Edwards (CA)
Emerson
English
Erdreich
Evans (IL)
Fascell
Fazio
Feighan
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Fowler
Frank
Frenzel
Frost
Fuqua
Gallo
Gaydos
Gejdenson
Gekas
Gibbons
Gilman
Hawkins
Hayes
Hefner
Hendon
Henry
Hertel
Holt
Howard
Hoyer
Huckaby
Hughes
Hunter
Hutto
Ireland
Jacobs
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennelly
Kildee
Kindness
Kleczka
Kolbe
Kolter
Kostmayer
Kramer
LaFalce
Lagomarsino
Lantos
Latta
Leach (IA)
Leath (TX)

Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lipinski
Livingston
Lloyd
Long
Lowery (CA)
Lowry (WA)
Luken
Lundine
MacKay
Madigan
Manton
Markey
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCloskey
McCurdy
McDade
McEwen
McGrath
McHugh
McKernan
Meyers
Mica
Michel
Mikulski
Miller (CA)
Mineta
Mitchell
Moakley
Molinari
Mollohan
Obey
Olin
Oxley
Packard
Panetta
Parris
Pashayan
Pease
Penny
Pepper
Perkins
Petri
Pursell
Rahall
Rangel
Ray
Reid
Richardson
Rinaldo
Robinson
Rodino
Roe
Roemer
Rogers
Rose
Rostenkowski
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Savage
Saxton
Schaefer
Scheuer
Schroeder
Schuette
Schumer
Seiberling
Sensenbrenner
Sharp
Solarz
Spence
Spratt
St Germain
Staggers
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Stark
Stenholm
Stokes
Stratton
Studds
Sundquist
Sweeney
Swift
Swindall
Synar
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Tauke
Tauzin
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vento
Visclosky
Volkmer
Walgren
Watkins
Waxman
Weaver
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Weiss
Wheat
Whitehurst
Whitley
Whittaker

Monson
Montgomery
Moody
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Morrison (WA)
Mrazek
Murphy
Myers
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Shaw
Shelby
Shuster
Sikorski
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Slattery
Slaughter
Smith (FL)
Smith (IA)
Smith (NJ)
Snowe
Snyder
Wilson
Wirth
Wise
Wolf
Wolpe
Wortley
Wright
Wyden
Yates
Yatron
Young (AK)
Young (FL)
Young (MO)

NOT VOTING—42

Addabbo
Alexander
Archer
Broomfield
Brown (CA)
Cheney
Clinger
DeLay
Dellums
Dickinson
Dornan (CA)
Garcia
Gephardt
Hartnett
Heftel
Hillis
Horton
Kemp
Lott
Lujan
McKinney
Miller (OH)
Morrison (CT)
Murtha
Neal
Nelson
Nichols
O'Brien
Ortiz
Owens
Pickle
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Quillen
Roth
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Siljander
Solomon
Vander Jagt
Whitten
Williams
Wylie

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Messrs. MARTINEZ, HUNTER, DUNCAN, BERMAN, and LOWERY of California changed their votes from "aye" to "no."

Mr. STUMP, Mr. McMILLAN, Ms. FIEDLER, and Mr. BATEMAN changed their votes from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. ANDERSON

Mr. ANDERSON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ANDERSON: On page 492, after line 13 of H.R. 2817 (Nov. 12, 1985 version) insert the following new subsection:

"(5) In order to evaluate the availability and suitability of establishing future potential regional hazardous waste storage and disposal centers on property owned by an agency of the Federal Government (other than those lands designated as environmentally critical or necessary for the national defense), the Administrator shall, within 90 days of the enactment of this section, select up to 3 sites to be studied to determine their feasibility to pose the greatest protection of human health and the environment, provided that such sites are (A) located in areas in which the regional planning agency has determined that such facilities are needed to accommodate near-term levels of hazardous waste generated in the area and in which access to surface transportation modes are available, (B) a maximum of 15,000 acres and no residence is within one mile, no highway is within two miles, and no incorporated community is within five miles, (C) proven to have no groundwater within a depth of 300 feet.

"Such sites shall be selected from application of persons, public entities or nonprofit private entities which have majority ownership interest, title, option and/or lease to lands surrounded by or contiguous to the proposed site. Within one year of the Administrator's selection of sites for study, the applicants who conduct such studies shall submit their findings and report to the Administrator who, after review and verification, shall, within 90 days of receipt of such reports, submit his findings on the suitability of such sites as regional hazardous waste storage and disposal centers to the Congress with his recommendations that such sites shall be made available to those applicants for such purposes."

Mr. ANDERSON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. APPLEGATE. Mr. Chairman, will the gentleman yield?

Mr. ANDERSON. I yield to the gentleman from Ohio.

(Mr. APPLEGATE asked and was given permission to revise and extend his remarks.)

Mr. APPLEGATE. Mr. Chairman, I would like to take this opportunity to offer my support for a strong Superfund Program that will begin the massive job of cleaning up hazardous waste. A strong bill, similar to H.R. 5640, from last session and the public works substitute to H.R. 2817, will also send a warning to those industries who have violated our environment and abused the system over the years.

Although this legislation is vital, it is not enough to halt the flow of hazardous waste. We must now turn our attention to the transportation of this hazardous waste and the gross abuses in this system.

On January 3, 1975, the Hazardous Material Transportation Act became law. Unfortunately the Department of Transportation failed to implement certain sections of this important legislation. The intent of Congress was not completely carried out and many communities and citizens have suffered and will continue to suffer from this neglect. Section 109(d)(2) states that the Secretary shall "establish and maintain a central reporting system and data center so as to be able to provide the law enforcement and firefighting personnel of communities, and other interested persons and government officers, with technical and other information and advice for meeting emergencies connected with the transportation of hazardous materials." At the time of enactment, this technology was not available. A system was implemented shortly thereafter by the Chemical Manufacturing Association. However, this system is fatally flawed and obviously not sufficient in today's society.

Ten years after enactment, we still hear the horror stories of accidents involving overturned trucks that require massive evacuations, and accidents that take 4 to 5 hours to clear simply because of the "unknown." We now have the technology and the system that would eliminate the unknown. It is my purpose to inform my colleagues of this system and to alert them to the major problems still plaguing the transportation industry in their efforts to deal with hazardous waste disposal.

One could argue that as a result of the high risks currently involved in the transportation of hazardous waste and because there are not adequate controls and guarantees, the trucking industry is facing attacks on all fronts. The insurance crisis in the industry and the discrimination that truckers face on our Nation's highways and in our communities is a result of the industry's past record, a record that is based on a few dishonest and unethical truckers and companies. Because of a flawed system the whole industry is suffering. We must act now to implement a new system that provides all parties with certain controls and offers a truly centralized, computerized data center. We allowed the industry, not the Department of Transportation, to implement the law and control the transportation themselves; they have failed. For the safety of our constituents, our environment, and the future of the trucking industry, I ask for the support of my colleagues in implementing the Hazardous Material Transportation Act of 1974.

(Mr. ANDERSON asked and was given permission to revise and extend his remarks.)

Mr. ANDERSON. Mr. Chairman, this amendment is designed to allow the Environmental ~~Protection~~ Agency to examine some of the vast areas of our country—the federally owned and controlled areas—as potential sites for future hazardous waste storage and disposal sites.

Under this proposal, the EPA would be required to permit up to three sites [located on Federal properties that are not environmentally sensitive, nor located on property that is necessary for the national defense] for study by individuals, public or private entities, that may wish to develop these sites at some future date for the disposal of hazardous wastes.

Today, the American West and Southwest are the fastest growing regions in the Country. Los Angeles—my home—is projected to become the largest metropolitan area in the country by the year 2000. San Diego, Phoenix, Las Vegas, Salt Lake City are all expected to grow dramatically over the next several years. And this growth occurs along with a growth in business, manufacturing and refining in the region. Hazardous and toxic wastes are the residue of a modern society, and we are only in the preliminary stages of addressing the proper disposal of these wastes.

Based on studies published in 1985 by the Southern California Hazardous Waste Management project, the southern California area produced an estimated 3.9 million tons of hazard wastes in 1983. Projected increases of 40 percent by 2000, combined with the cleanup of contaminated soils and treatment residuals remaining from the hazardous waste sites that were previously uncontrolled, leads us to the inescapable conclusion that additional treatment and disposal facilities are urgently needed in the area.

With the closing of the BKK landfill at West Covina in November 1984, there are currently only two class I landfills serving the southern California region: Casmalia, above Santa Barbara and Kettleman Hills, about 170 miles north of Los Angeles. Both of these landfills have been issued determinations of violations by the EPA related to their operations. Should these facilities be forced to close, the nearest class I landfills would then be in northern California and Nevada.

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But, even if these facilities were in operation, there is a need for repositories and treatment facilities to accept waste that cannot be treated to the extent feasible to diminish hazardous and toxic properties, and residuals from treatment processes. Based on current amounts of hazardous waste being generated in southern California, if we fully treated all of those wastes, we have a shortfall of approximately 900,000 tons per year in treatment capacity; 900,000 tons which should be treated and we have approximately the same shortage—900,000 tons—in repository capacity.

The amendment that I have proposed would direct the EPA to allow the study of potential sites for storage and disposal of hazardous wastes on Federal lands. Exempt from the area of study would be areas which are environmentally sensitive, and lands necessary for the national defense. However, especially in the West, lands owned by the Federal Government encompass vast areas, areas which are not populated, areas which are not used for recreation, nor by endangered species, areas which could be ideal, or as close to the ideal as is possible, for the storage of hazardous wastes.

If, after the study, the EPA finds that these areas meet the criteria for siting hazardous waste facilities and exceed the best possible locations on privately held land, then, in my view, these lands should be made available for that purpose.

I yield to the chairman of the Water Resources Subcommittee, Mr. Roe.

Mr. ROE. Mr. Chairman, I appreciate my colleague from California for yielding and I know of his concern for the environment—especially for the proper treatment and disposal of hazardous wastes.

His amendment, calling for studies of possible sites on Federal lands, has merit and, I believe, deserves serious attention.

There is no question that the Federal Government has large holdings, especially in the West, and that we may discover that these lands may offer the best possible sites for disposal.

The gentleman's amendment assures the necessary protections so that Federal lands which are environmentally sensitive would not be considered. In addition, those lands necessary to the national defense would be exempt from consideration. But, even with these exclusions, vast areas of Federal lands remain to be examined.

Our No. 1 priority has to be to properly treat these deadly wastes and then, after treatment, to dispose of these wastes in areas that will not allow our populations to be exposed to the residue. It very well may be that these locations could best be sited on Federal lands, away from our communities, away from development.

I support the intent of the gentleman's amendment and pledge to work with him to assure that this is fully exploited.

Mr. ANDERSON. Mr. Chairman, I yield to the gentleman from California [Mr. LEWIS].

(Mr. LEWIS of California asked and was given permission to revise and extend his remarks.)

Mr. LEWIS of California. Mr. Chairman, I appreciate my colleague yielding. I must say to the gentleman that while I do understand and appreciate the purpose of his amendment, and fully had expected that this sort of consideration might develop on the floor at some time, I had not been anxious to see this issue raised on the floor of the House.

Nonetheless, in the real world that we are living in, in southern California, in the western region, it was bound to eventually.

It is very clear that we have a confluence of very difficult circumstances here.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. ANDERSON was allowed to proceed for 3 additional minutes.)

Mr. LEWIS of California. Will the gentleman yield?

Mr. ANDERSON. I yield to the gentleman.

Mr. LEWIS of California. It is very clear that the toxic waste problem in southern California is as critical as everywhere else in the country, but with the growing population, the huge territory that is involved, there are some very special circumstances.

Presently, the Department of the Interior is involved in long-range and comprehensive studies relative to the public lands and specifically those lands that involve my desert territory. The land that you are talking about must include that desert territory.

Frankly, I would like to wish the question away, but it will not go away. It seems to me that under the existing law, the appropriate agencies that are involved; Interior, Bureau of Land Management, et cetera, can come together working with the Congress and expedite this process.

They have under their consideration the long-term multiple use of various portions of this property where it is appropriate, and it does occur to me that this matter could be handled administratively under existing law without the need for additional legislation.

Presuming that that is correct, I would ask that the chairman of the Subcommittee on Public Lands request time and respond to this question.

Mr. SEIBERLING. Will the gentleman yield?

Mr. ANDERSON. I yield to the gentleman.

Mr. SEIBERLING. Mr. Chairman, I think the gentleman has stated a very important objective with respect to the use of public lands for helping solve this very serious problem.

I would simply point out that there are already existing statutory patterns under the Federal Land Policy and Management Act, the National Forest Management Act and related acts, in which the public lands are operated under the principle of multiple use; and anyone who wants to make use of the public land for a specific purpose may go through the procedures set forth in those statutes and obtain the opportunity through the land-planning process that is set forth in those statutes to have certain areas set aside for this kind of purpose.

The purpose of the planning process as set forth in those statutes is to make sure that the multiple uses are harmonized to the maximum extent posssible, and that the most suitable areas for particular uses are chosen.

So I would suggest that rather than start with a new statutory authorization, as this amendment would do, we do not really need it; we already have the carefully worked out procedures to accomplish the gentleman's purpose, and therefore, I would strongly recommend that we explore exactly how his aim could be fitted into the existing framework; and if necessary changes must be made, they can be made, but I do not think they will be necessary.

Mr. ANDERSON. I thank the gentleman, and with those assurances, I withdraw the amendment.

The CHAIRMAN. Without objection, the amendment is withdrawn.

There was no objection.

AMENDMENT OFFERED BY MRS. JOHNSON

Mrs. JOHNSON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mrs. JOHNSON: On page 151, line 15, after the period insert the following new sentence:

"The agreement may provide that a settling parties' future liability, if any, shall not exceed the percentage of liability agreed to by such party in the agreement."

Mrs. JOHNSON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Connecticut?

There was no objection.

Mrs. JOHNSON. Mr. Chairman, this is a clarifying amendment that merely affirms that EPA has the authority to provide limited protection for settling parties in regard to their future liability. That protection is an opportunity for a settling party to have its future liability at a cleanup site capped at the percentage of cleanup costs for which it is responsible under the settlement agreement.

This is intended to be part of the package of incentives that EPA may negotiate to encourage potentially responsible parties to come forward and agree to use their own resources, rather than the limited resources of the Superfund, to achieve the act's cleanup objectives.

Mr. ROE. Will the gentlewoman yield?

Mrs. JOHNSON. I yield to the gentleman.

Mr. ROE. Mr. Chairman, we have reviewed this amendment. It is a splendid addition to the bill and there is no objection on this side.

Mr. LENT. Will the gentlewoman yield?

Mrs. JOHNSON. I yield to the gentleman.

Mr. LENT. Mr. Chairman, we similarly have looked the amendment over. It is a technical, clarifying amendment. I think it will go a long way toward encouraging private parties to come forward to clean up, and we heartily endorse the amendment of the gentlewoman.

Mr. DINGELL. Will the gentlewoman yield?

Mrs. JOHNSON. I yield to the gentleman.

Mr. DINGELL. Mr. Chairman, we are very happy to accept the amendment.

Mr. SNYDER. Will the gentlewoman yield?

Mrs. JOHNSON. I yield to the gentleman.

Mr. SNYDER. Mr. Chairman, from the minority on the Committee on Public Works, we accept the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from Connecticut [Mrs. JOHNSON].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. MARKEY

Mr. MARKEY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MARKEY: Page 132, line 20, strike paragraph "E" and all that follows through line 6, page 133.

Mr. MARKEY. Mr. Chairman, I rise with an amendment to correct what I believe to be a very serious deficiency in this legislation, and that is that this bill arbitrarily decides that the EPA Administrator should apply the same standards to private parties that are responsible for cleaning up sites that they have been responsible for polluting in the first place with the same standards which would be used for the EPA Administrator in administering the $10 billion which we appropriate in order to clean up these sites with public moneys that have been in fact gathered for these purposes.

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And the reason that this distinction is, in fact, not appropriately applied in this particular piece of legislation is this: that the EPA Administrator, in applying the $10 billion, has to make some very, very tough decisions because there are so many sites across America, because in many cases there are emergency circumstances which surround the particular site it is not in fact always appropriate for the Administrator to apply a poor remedy but, rather, an emergency remedy which controls the particular site and in fact cuts it off from further endangerment of the public health in the surrounding area. But at the same time that has not, in fact, provided a permanent solution for the site. There legally the private parties are still responsible. What we have done in this legislation is take a concept called fund balancing, that is, a concept which allows the EPA Administrator $10 billion, to take that $10 billion and to fund balance, that is, to decide how to divvy up the $10 billion so as many as 2,000, 3,000, 4,000, 5,000, 10,000 sites can be treated. But what we do in this bill is, we allow that fund balancing concept to then apply to the liabilities, the responsibility of the private parties. That is the same standard applied to the private parties for their additional responsibility of taking the site from its emergency status to full, complete cleanup and limiting them to the same, in fact, amount that would be applied under the EPA Fund that has been created with public moneys.

The problem with that is that the $10 billion which we are appropriating in no way approximates the full cost which is going to have to ultimately be expended in order to clean up these sites. The EPA estimates that the total cost of cleaning up the worst sites could exceed $46 billion and more than half could be paid by private parties. GAO has found that the liability of private parties in a final cleanup could reach $39 billion. OTA estimates that the cost could be approximately $100 billion with equal costs from private industry and run the fund in the public sector.

So while we understand and appreciate the fact that under certain circumstances it would be within the discretion of the EPA Administrator to decide that some sites—let it be made perfectly clear that the legislation already provides in fact for provisions in which the EPA Administrator is able to take out these impossible-to-clean sites. It does require for the cleanup of the Augean Stables. It does not require for the imposition of a Herculean task upon a private sector company. It can use that discretion.

What we do here, however, is we allow, through this last provision, this final provision in the waiver process to be used by the EPA to allow a company to escape almost totally from any additional expenditures beyond that which the EPA Administrator would in fact be required to use himself with the $10 billion funding. That I do not believe is really the intention of this legislation. My belief is that the fund is obligated until the money runs out. But the private responsibility of all parties, all private sector parties, runs until the sites are cleaned, and that is really the intention of the legislation. And by having a provision like this, what we allow the EPA to do in its discretion is to limit that responsibility. I do not think that is the intention of this legislation, and I would hope that the Members here would strike this provision so that it would be possible for us to hold accountable the private sector companies to the same extent that we are the EPA in the cleanup of these sites.

Mr. FIELDS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, this bill requires cleanups to meet any relevant and appropriate standard under the other Federal environmental laws such as the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act. While meeting the standards of other Federal environmental laws is a worthy goal, this bill also recognizes that other environmental laws were written for situations entirely different than Superfund site cleanups. Therefore, the bill provides limited waivers of certain standards.

The waiver in question here would allow noncompliance with certain standards if compliance which would consume a disproportionate share of Superfund resources. The waiver clarifies that the Administrator of the Environmental Protection Agency may extend the same fund-balancing waiver to privately financed cleanups as is currently available for fund-financed cleanups. If the Administrator determines that a privately financed cleanup will cost substantially more than a fund-financed cleanup of the same site, the Administrator may apply the fund-balancing waiver to the privately financed cleanup. Applying the fund-balancing waiver to both the Superfund financed and privately financed cleanups recognizes both Superfund and private resources are limited and must be expended wisely.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. FIELDS. I will be glad to yield to the gentleman from Massachusetts.

Mr. MARKEY. I thank the gentleman for yielding.

If I understand what the gentleman is saying then, this decision to exercise the waiver of public health standards is at the sole discretion of the EPA Administrator, is that not so?

Mr. FIELDS. That is right.

Mr. MARKEY. It can never be used as a defense to liability by a private responsible party or as a basis to overtun a remedial action decision by the Administrator.

Mr. FIELDS. That is right.

Mr. MARKEY. The waiver is intended to apply to limited cases where the expenses of the remedial action significantly exceed the average costs of the vast majority of remedial actions and there is no doubt that the Administrator would never consider using fund resources to pay for such a remedial action.

Mr. FIELDS. That is exactly right.

Mr. MARKEY. The waiver is not intended to force the EPA Administrator to engage in any additional analysis of how he might spend fund money when he is asking a private party to pay for the cleanup, is that correct?

Mr. FIELDS. That is right.

Mr. MARKEY. Then under those circumstances, I, in fact, believe that this amendment is no longer needed, that we have sufficiently clarified the amendmet that allows for the protection of the vast majority of sites in this country from that type of arbitrary decisionmaking by the EPA Administrator.

I would like to clarify if that is the same understanding that the chairman of the subcommittee and the chairman of the full committee have of the colloquy and its effect upon this legislation.

Mr. ECKART of Ohio. Mr. Chairman, will the gentleman from Texas yield to me?

Mr. FIELDS. I yield to the gentleman from Ohio.

Mr. ECKART of Ohio. I thank the gentleman for yielding.

Mr. Chairman, I know this matter has been of particular interest to my colleague from Texas, who has invested a lot of time in subcommittee and in full committee.

It is my understanding in this colloquy here that what we are discussing is that there is no formal cost-benefit analysis taking place under this amendment.

Mr. FIELDS. That is correct.

Mr. ECKART of Ohio. I thank the gentleman. And I thank my friend from Massachusetts for his help in this matter.

Mr. FIELDS. Let me stress one other thing, and then I would be glad to yield further. In no case whatsoever can protection of human health and the environment be waived. I think that was of particular interest to the gentleman from Massachusetts.

Mr. MARKEY. If the gentleman will yield further, that is the primary concern of the amendment which I was making.

Mr. Chairman, if I may gain the attention of the subcommittee chairman and inquire if that is his understanding as well of the colloquy and the interpretation of the provision in the law.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. FIELDS. I yield to the gentleman from New Jersey.

Mr. FLORIO. Listening to the gentleman's interpretation, I would say yes, that is the interpretation.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. FIELDS. I yield to the gentleman from New Jersey.

Mr. ROE. I agree with the gentleman's interpretation.

Mr. MARKEY. Thank you very much.

The CHAIRMAN. The gentleman [Mr. MARKEY] does not have the time. The gentleman from Texas [Mr. FIELDS] has the time.

Mr. LENT. Mr. Chairman, will the gentleman yield to me?

Mr. FIELDS. I yield to the gentleman from New York.

Mr. LENT. For further clarification, as I understand it, in essence, what the gentleman has said is that the administrator has the discretion not to require private parties to pay substantially more for the cost of cleanup remedies in those cases where the costs are very high and where the fund would have selected a less costly remedy?

Mr. FIELDS. That is correct.

Mr. LENT. I thank the gentleman.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. FIELDS. I yield to the gentleman from Massachusetts.

Mr. MARKEY. Mr. Chairman, I would like to ask unanimous consent to withdraw my amendment at this time.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

AMENDMENT OFFERED BY MR. ANDREWS

Mr. ANDREWS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ANDREWS: On page 103, after line 14, insert:

(4) Governmental employees

A state employee or an employee of a political subdivision who provides services relating to response action while acting within the scope of his authority as a governmental employee shall have the same exemption from liability (subject to the other provisions of this section) as is provided to the response action contractor under this section.

Mr. ANDREWS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection

to the request of the gentleman from Texas?

There was no objection.

Mr. ANDREWS. Mr. Chairman, what this amendment does is add a provision to that section that deals with the liability of response action contractors. Under existing law, employees of Government agencies, for instance, a State employee that might be assigned to work with a response action contractor does not have the same liability exposure as that response action contractor. He literally could have an employee of the State, a supervisor of a third party, and find himself liable under some standard that the response action contractor does not find himself liable for.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS. I would be happy to yield to the gentleman from New Jersey.

Mr. ROE. We have reviewed this amendment, and it is an important addition to the bill. We have no objection on our side.

Mr. LENT. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS. I would be happy to yield to the gentleman from New York.

Mr. LENT. Mr. Chairman, we have no objection to the amendment offered by the gentleman from Texas [Mr. ANDREWS] on this side.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas [Mr. ANDREWS].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. ROWLAND OF GEORGIA

Mr ROWLAND of Georgia. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment Offered By Mr. ROWLAND of Georgia: Page 89, line 14, strike out "provide" and insert in lieu thereof "arrange for."

(Mr. ROWLAND of Georgia asked and was given permission to revise and extend his remarks.)

Mr. ROWLAND of Georgia. Mr. Chairman, in our consideration of Superfund, I hope that the House will act to correct a provision that was enacted in the original law and one that is proposed for continuation in H.R. 2817. Specifically, section 116 establishing the Agency for Toxic Substances and Disease Registry in paragraph (r)(1) establishes that the Agency "shall provide medical testing and care" in case of public health emergencies for exposed individuals.

My concern relating to this provision is not to its intent so much as to the reality of the situation that might be faced in case of an emergency. First, the ATSDR's principal purpose relates to the provison of testing and studies of individuals who have been or may have been exposed to hazardous substances to determine what, if any, deleterious effects may have been suffered. In addition, the agency maintains listings of hazardous substances, toxicological profiles of these substances, and establishes disease registries and health surveillance programs, when appropriate. With such responsibilities, the ATSDR is staffed to support these activities with administrative staff and scientists—toxicologists, epidemiologists—and not health care givers.

Second, the Agency is not prepared to accept the responsibility for provision of medical care within the funding available to it. A GAO report September 28, 1984, commented on the lack of legislative guidance for this provison and the DHHS's reluctance to implement any direct medical care activity under this section. The GAO pointed out that one site could require as much as $5 million for immediate medical care and followup services. The Agency funding in this bill is not sufficient to fully cover the basic responsibilities of ATSDR. What level of funding might be required to cover emergencies, particularly if there should be more than multiple occurrence?

Third, the current language creates the impression that the public will be taken care of in the case of an emergency. In fact, the Agency cannot do so now and could not prepare itself for any such eventuality. The direct provision of care will be done by local hospitals, physicians and other health personnel called to the scene of any release of a hazardous substance. If we are truly concerned about provision of medical care, the House should consider an alternative mechanism and funding to adequately serve any population that may be exposed to hazardous substances.

Mr. ECKART of Ohio. Mr. Chairman, will the gentleman yield?

Mr. ROWLAND of Georgia. I yield to the gentleman from Ohio.

Mr. ECKART of Ohio. Mr. Chairman, I have reviewed this amendment, and it is clear to me that in fact what the gentleman intends is what we also intend. But I would just inquire: This in no way will vitiate the ability of ATSDR to do the appropriate medical testing and analysis that the rest of the section envisions.

Mr. ROWLAND of Georgia. That is correct. They will continue to do testing which they are qualified to do.

May I say further to the gentleman that only $30 million are available to ATSDR to carry out their functions, and they really do not have the money to provide medical care.

Mr. ECKART of Ohio. We may have to adjust somewhat, if the gentleman will continue to yield to me, but based on these representations we are prepared to accept this amendment.

Mr. LENT. Mr. Chairman, will the gentleman yield?

Mr. ROWLAND of Georgia. I yield to the gentleman from New York.

Mr. LENT. We are also prepared to accept the gentleman's amendment.

Mr. SNYDER. Mr. Chairman, will the gentleman yield to me?

Mr. ROWLAND of Georgia. I yield to the gentleman from Kentucky.

Mr. SNYDER. We are prepared to accept the amendment, Mr. Chairman.

Mr. ROE. Mr. Chairman, will the gentleman yield to me?

Mr. ROWLAND of Georgia. I yield to the gentleman from New Jersey.

Mr. ROE. Mr. Chairman, we have no objection to the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Georgia [Mr. ROWLAND].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. DAUB

Mr. DAUB. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DAUB: Page 46, after line 19, insert the following new section:

(c) RESPONSE CLAIMS.—(1) Section 111(a)(2) of CERCLA is amended to read as follows:

"(2) payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 311(c) of the Clean Water Act and amended by section 105 of this title: *Provided, however*, That such costs must be approved under said plan and certified by the responsible Federal official prior to the taking of any action for which costs may be sought; and".

(2) Section 112 is amended by striking subsection (a) and inserting in lieu thereof the following:

"(a) No claims may be asserted against the Fund pursuant to section 111(a)(2) of this title unless such claim is presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 107 of this title. In any case where the claim has not been satisfied within sixty days of presentation in accordance with this subsection, the claimant may present the claim to the Fund for payment: *Provided*, That no claim against the Fund may be considered during the pendency of an action in court to recover costs which are the subject of the claim.".

(3) Section 112(b) is amended by striking "$5,000" in paragraph (1) and inserting "25,000" in lieu thereof; and by striking all of paragraphs (2), and (3), and (4) and inserting in lieu thereof the following

"(2) The President may, if he is satisified that the information developed during the processing of the claim warrants it, make and pay an award of the claim: *Provided*, That no claim may be awarded to the extent that a judicial judgment has been made on the costs that are the subject of the claim. If the President declines to pay all or part of the claim, the claimant may, within thirty days after receiving notice of the President's decision, request an administrative hearing.

"(3) In any proceeding under this subsection, the claimant shall bear the burden of proving his claim.

"(4) All administrative decisions made hereunder shall be in writing, with notification to all appropriate parties, and shall be rendered within ninety days of submission of a claim to an administrative law judge, unless all the parties to the claim agree in writing to an extension or unless the President, in his discretion, extends the time limit for a period not to exceed sixty days.

"(5) All administrative decisions hereunder shall be final, and any party to the proceeding may appeal a decision within thirty days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the release or threat of release took place. In any such appeal, the decision shall be considered binding and conclusive, and shall not be overturned except for arbitrary or caprisious abuse of discretion.

(6) Within twenty days after the expiration of the appeal period for any administrative decision concerning an award, or within twenty days after the final judicial determination of any appeal taken pursuant to this subsection, the President shall pay any such award from the Fund. The President shall determine the method, terms, and time of payment.".

Mr. DAUB (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

Mr. DINGELL. Mr. Chairman, I reserve a point of order on the amendment.

The CHAIRMAN. The gentleman from Michigan reserves a point of order.

Mr. DINGELL. Mr. Chairman, may we have a copy of the amendment?

The CHAIRMAN. Does the gentleman from Michigan reserve his point of order?

Mr. DINGELL. That is correct, Mr. Chairman.

Mr. DAUB. Mr. Chairman, this is an amendment to clarify and streamline the process for response claims. Section 111 of CERCLA authorizes parties who conduct response actions to assert claims against the fund to recover these costs. The procedures to be followed in presenting and processing these claims against the fund are set forth in section 112.

Response claims can help to expedite private party cleanup. Private parties can promptly conduct cleanup action, and bring claims to the fund when the response action is completed. However, the process under the existing statute for addressing such claims is very complex. CERCLA currently prescribes five steps at a minimum in the process from initial presentation of the claim to the responsible party to final payment of an award. Where administrative review and judicial appeal are involved, the process may take as many as eight steps before the claimant receives final payment of an award.

The amendments to this section streamline the claims procedure. First, section 111 is amended to clarify the authority of the agency to preauthorize response claims. Preauthorization can be used to assure that response actions are conducted propoerly, and that they are limited to available funds.

Second, an administrative hearing process has been substituted for the claims adjustment and arbitration provisions currently included in the statute. This change preserves the rights of claimants for review of agency decisions, while allowing decisions concerning claims to be made more simply and quickly.

Response costs are not now typically handled by claims adjusting organizations, nor are these costs particularly appropriate for consideration by a panel of arbitrators.

This amendment simply improves existing procedures, and does not create any additional burden on the fund. The Government can pursue responsible parties for costs of cleanup, while processing claims against the fund. Mr. Chairman, this amendment creates a flexible, simple process that will expedite private party response under CERCLA, and I urge passage of this amendment.

□ 2030

Mr. LENT. Mr. Chairman, will the gentleman yield?

Mr. DAUB. I yield to the gentleman from New York.

Mr. LENT. Mr. Chairman, I did not mean to interrupt the gentleman but we have had an opportunity over here to review the gentleman's amendment. It does improve the claims procedure, and we are prepared to accept the gentleman's amendment.

Mr. DAUB. I thank the gentleman for his contribution.

The CHAIRMAN. Does the gentleman from Michigan [Mr. DINGELL], the chairman of the Committee on Energy and Commerce, withdraw his point of order?

Mr. DINGELL. Mr. Chairman, I do not.

Mr. Chairman, if the gentleman will yield, just briefly, as I understand, this does not affect in any way the joint and several liability.

Mr. DAUB. Of course not. The gentleman is correct.

Mr. DINGELL. As I understand the amendment, all it does is deal with procedural questions?

Mr. DAUB. Yes, and it establishes the usefulness of preauthorization, which is in the current law.

Mr. DINGELL. Mr. Chairman, I have consulted with my colleagues on the Committee on Public Works and Transportation, and on behalf of the Energy and Commerce Committee we will accept it.

Mr. DAUB. I thank the distinguished chairman of the Energy and Commerce Committee.

The CHAIRMAN. Does the gentleman from Michigan withdraw his point of order?

Mr. DINGELL. I withdraw the point of order, Mr. Chairman, and we find, on behalf of the Committee on Energy and Commerce and the Committee on Public Works and Transportation that the amendment is acceptable.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Nebraska [Mr. DAUB].

The amendment was agreed to.

The CHAIRMAN. Are there further amendments to title I?

AMENDMENT OFFERED BY MR. SKELTON

Mr. SKELTON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SKELTON: Page 6, after line 20, insert the following new subsection.

(b) HAZARDOUS SUBSTANCE.—Section 101(a)(14)(C) of CERCLA is amended by inserting after "Congress" the following: "and not including used oil that is listed or identified as a hazardous waste under the Solid Waste Disposal Act if such used oil is treated, managed, or recycled in compliance with a final rule promulgated by the Administrator under such Act" or such used oil is treated, managed or recycled in such a way as to remove or render harmless the hazardous constituents contained in such used oil or such used oil does not contain hazardous constituents.

Redesignate the subsequent subsections of section 101 of the bill accordingly.

Mr. SKELTON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. SKELTON. Mr. Chairman, this amendment is offered on behalf of this gentleman from Missouri and also the gentleman from Texas [Mr. STENHOLM]. I offer this amendment as concerns the application of the Superfund law to use oil that is being recycled. As my colleagues are aware, the Environmental Protection Agency has recently proposed regulations which lists used oil as a hazardous waste under the RCRA Act, and to establish stringent regulations governing the recycling of used oil.

Now, since any hazardous wastes listed under the RCRA Act automatically become a hazardous substance for the purpose of the Superfund, it is important that Congress give serious consideration to the impact that Superfund will have on the existing oil recycling system.

The bottom line, Mr. Chairman, of this amendment is to continue to encourage garages and truck stops and service stations to recycle oil properly and to protect our environment. Waste oil, unlike many other hazardous wastes, is reusable and is valuable. It is in our best interests to encourage energy conservation where possible and, in addition, to have environmental protection. This amendment exempts used oil from the hazardous waste category in the soon-to-be-finalized regulations if you dispose of it in a manner which treats or recycles it, rendering it harmless.

This thereby sets a standard to protect human health and the environment while at the same time encouraging the recycling of a valuable resource. This exemption will take effect when the regulations which categorize the waste oil harmless are finalized. The vast majority of these businesses are small businesses, such as service stations, such as truck stops, many of which provide a very useful service as collection sites for waste oil that individuals might otherwise just dump. The recycling effort is an important one and deserves our support, Mr. Chairman.

Mr. ECKART of Ohio. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to perhaps engage the gentleman from New Jersey [Mr. FLORIO] in a colloquy on this matter. We have had some substantial discussion among our colleagues on Public Works, the chairman of our subcommittee and the sponsors of H.R. 2817, and there appears to be, Mr. SKELTON and Mr. FLORIO, some concern as to, first of all, the fact that I understand the rule has only been promulgated about 6 days ago, about November 29. Then there is the applicability of a cleanup regimen as part of that final rule and what would be the application of the handwritten language that has been attached, which has been intended to be a backstop, catchall to protect the environment, as opposed to allowing a loophole.

I would ask for the observations of my colleague from New Jersey.

Mr. FLORIO. The gentleman is correct. Certainly the intent of the gentleman from Missouri is admirable. We want to bring about an encouragement of recycling of waste oil. That is highly desirable. The rule that we understand has just been published which, incidentally, we tried to get published for the last 2 years, does not deal with the problem of what happens if there is a spill of the waste oil.

My suggestion and the suggestion of the gentleman from Ohio is that perhaps this amendment be ended on line 7 with a period or a comma, and then have some language which is in the process of being submitted, to urge that the rule be modified before full publication, so as to allow for corrective action.

I yield back to the gentleman from Ohio to perhaps suggest some language.

Mr. ECKART of Ohio. I want to get the understanding of the gentleman from Missouri that it is his intention that this be the most environmentally restrictive application of this provision, as well.

Mr. SKELTON. That is correct.

Mr. ECKART of Ohio. Then I would suggest to the gentleman from New Jersey, whose staff has been helpful, that perhaps what we would look at is that line 6 would read "a final rule promulgated by the Administrator under such Act," and then add new language, strike what was written, "and such rule shall contain the authority for the Environmental Protection Agency to order corrective action for any release of used oil."

Does the gentleman have any problem with that?

Mr. SKELTON. I would have no problem with that, Mr. Chairman, and I would ask unanimous consent that my amendment be corrected and amended per the suggestion of the gentleman from Ohio.

The CHAIRMAN. Will the gentleman from Ohio submit the modification to the desk, please?

Mr. ECKART of Ohio. Mr. Chairman, I ask unanimous consent that the amendment of the gentleman from Missouri [Mr. SKELTON] be modified so that in line 5 it reads as follows: "* * * in compliance with a final rule promulgated by the Administrator under such Act," and then add the new language, "and such rule shall contain the authority for the Environmental Protection Agency to order correction action for any release of used oil." Strike the balance of the hand-written language.

AMENDMENT OFFERED BY MR. ECKART OF OHIO TO THE AMENDMENT OFFERED BY MR. SKELTON

The CHAIRMAN. The Chair is going to take the liberty of considering that an amendment to the Skelton amendment.

The Clerk will report the amendment.

The Clerk read as follows:

> Amendment offered by Mr. ECKART of Ohio to the amendment offered by Mr. SKELTON: Line 6 is amended to read as follows: "a final rule promulgated by the Administrator under such Act; and such rule shall contain the authority for the Environmental Protection Agency to order corrective action for any release of used oil."

Mr. ECKART of Ohio. Mr. Chairman, the language that we suggest is an attempt to ensure, as I believe the gentlemen from Missouri and New Jersey have made clear, that there will be an underlying environmental protection guarantee for the management, treatment, and recycling, as the amendment references, of used oil.

I believe the gentlemen concur that that is their intent.

We believe that option that was presented to us, that we now have in front of us, is perhaps a better guarantee, and I would urge the adoption of my amendment to the amendment of the gentleman from Missouri.

Mr. LENT. Mr. Chairman, will the gentleman yield for a question?

Mr. ECKART of Ohio. I yield to the gentleman from New York.

Mr. LENT. Mr. Chairman, I was prepared to accept the gentleman's amendment before the amendment of the gentleman from Ohio had been offered. I just want to clarify the effect of the gentleman's amendment to the amendment is to put the language back substantially in the same form it had been at the time it was first approved by the EPA Administrator?

Mr. ECKART of Ohio. It is our intention, yes, with the language that was originally handwritten, that we have a catchall to avoid liability, to avoid environmental problems with leaks.

Mr. LENT. And the amendment, as amended, has the support of the Environmental Protection Administrator, so far as the gentleman is aware?

Mr. ECKART of Ohio. I am just advised by my colleague from Texas that it is acceptable under those terms.

Mr. SNYDER. Mr. Chairman, will the gentleman yield? I would like to have a copy of the amendment, both the original and your addition. I have not seen either copy, and I have checked with the Public Works staff on the minority, and they have not.

Mr. ECKART of Ohio. I would ask the indulgence of the Clerk to perhaps borrow their Xerox machine behind the dais over there. I want to assure my friend from Kentucky that it was handwritten here at this moment, and there is no attempt in any way to engage in any subterfuge.

The CHAIRMAN. The Clerk is going to provide a copy for the gentleman from Kentucky.

Mr. ECKART of Ohio. Mr. Chairman, pending that, I yield to my colleague, the gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman for yielding.

As I understand the amendment of the gentleman from Ohio to the amendment of the gentleman from Missouri, what he is concerned about is the case where large recyclers have a leak or discharge occur in the process of storage or in the process of recycling itself, and there ought to be a chance for EPA to take corrective action under those circumstances, and that is what his amendment does. It says, in effect, that while we encourage the recycling of used oil and want to encourage in fact its collection and recycling rather than its disposition and waste somewhere that, nevertheless, if there is a discharge in the process, in the storage or processing of that oil, that EPA still would maintain the ability to take corrective action in that case, which we want them to be able to do.

So I think the amendment is good.

Mr. GREEN. Mr. Chairman, will the gentleman yield?

Mr. ECKART of Ohio. I yield to my colleague, the gentleman from New York.

Mr. GREEN. I am a little bit concerned about the amendment and the amendment to the amendment because in the last 2 years I have been pursuing the issue of recycled oil that is improperly recycled and not adequately recycled and thus puts toxic chemicals into the air, and I have also been concerned with the fact that oil, both heating oil and reused oil, has from time to time been adulterated with toxic chemicals as a cheap but obviously harmful means of disposing of those, and I would like the gentleman from Ohio and the gentleman from Missouri to explain whether they are making any change in the regulations that the EPA published this fall which deal with the whole question of the adulteration of heating oil and the quality of reused oil.

Mr. ECKART of Ohio. First of all, before I yield to my friend from New Jersey, let me say precisely that the rules as adopted on November 29, are designed to preclude the problem the gentleman has been pursuing so vigorously for the last 2 years. My amendment to the amendment makes sure that we contain any potential release.

I yield to my friend, the gentleman from New Jersey.

Mr. FLORIO. I thank the gentleman for yielding.

Mr. Chairman, I can identify with the problem of the gentleman from New York. I, too, have been trying to get EPA to publish the rule for the last 2 years they have been promising us. That is what caused some apprehension about the form of the initial amendment which said upon publication of a rule or—and then they had some generalized language that I would not be comfortable with. But the representation has been made that the rule is about to come out. So the amendment that the gentleman from Ohio has offered, put a comma at the end of the rule, and then put some clarifying language as to what the rule should have, so that I think this should achieve two purposes, provide us with some protection from inappropriate uses of waste oil, as the gentleman indicated, also spur EPA on to make sure that the rule is finalized in a form that is going to provide for the things that the gentleman wants and the additional concern about corrective action the gentleman's amendment included.

The CHAIRMAN. The time of the gentleman from Ohio [Mr. ECKART] has expired.

(By unanimous consent, Mr. ECKART of Ohio was allowed to proceed for 2 additional minutes.)

Mr. GREEN. Mr. Chairman, will the gentleman yield?

Mr. ECKART of Ohio. Yes, I continue to yield to the gentleman from New York.

Mr. GREEN. First, of course, the EPA has only published part of what it has set out to do, and the material with respect to industrial use of these oils has not yet been dealt with.

Mr. ECKART of Ohio. That is why we used the term "final rule," which has to be all encompassing, including now the spill protection, as well.

Mr. GREEN. If the gentleman will yield further, what you are representing to me is that in fact you are not in any way weakening or adulterating the regulations that the EPA has proposed at this point.

Mr. ECKART of Ohio. The gentleman is perfectly correct.

Mr. GREEN. I thank the gentleman.

□ 2045

Mr. ECKART of Ohio. I yield to the gentleman from Texas [Mr. Ralph M. Hall].

Mr. RALPH M. HALL. As the gentleman knows, as one of the proponents of the change, and even with the input from the subcommittee chairman, Mr. Florio, I think that strengthens the rule and clarifies it and I certainly stand in support of it as it has been amended.

Mr. ECKART of Ohio. I thank the gentleman and I yield to the gentleman from New York [Mr. Lent].

Mr. LENT. I thank the gentleman for yielding.

I have had an opportunity to go over the amendment to the amendment and I think it is in good order. With 1.2 billion gallons of used oil produced each year, it is essential that this compromise be enacted and I would urge my colleagues to support the gentleman's amendment.

Mr. ECKART of Ohio. We have, I would assure my friend from Long Island, endeavored to structure this so that we in no way vitiate the terms of what we have discussed earlier.

I yield to the gentleman from New Jersey [Mr. Roe].

Mr. ROE. With the corrected language, I would like to hear what the gentleman from Public Works has to say.

Mr. ECKART of Ohio. I yield to the gentleman from New York [Mr. Molinari].

The CHAIRMAN. The time of the gentleman from Ohio [Mr. Eckart] has expired..

(On request of Mr. Molinari and by unanimous consent, Mr. Eckart of Ohio was allowed to proceed for 5 additional minutes.)

Mr. ECKART of Ohio. I yield to the gentleman from New York [Mr. Molinari].

Mr. MOLINARI. The language that was in here that was handwritten, was that in the original amendment that was submitted?

I just got a copy of the amendment a few minutes ago, and the question I have is there was language added here that was handwritten. Treated, managed, recycled, and so forth. Was that in the original amendment that was offered by the gentleman from Missouri?

Mr. ECKART of Ohio. The handwritten language that you see originally prepared at the bottom of the paper would be stricken in my amendment to the amendment.

Mr. MOLINARI. I understand. The question I am posing is, When was that language, not the language talking about the ruling of the Environmental Protection Agency, but the handwritten language that was eliminated and substituted by the other, when was that put in?

Mr. ECKART of Ohio. That was added prior to the introduction of the amendment so that is how it would be as introduced. When we originally examined just the typed version of the amendment, I and others were not satisfied that it was environmentally acceptable. We attempted to find two ways to skin the cat, and this way was suggested to us as a more perfecting way to do it.

Mr. MOLINARI. If the gentleman would yield, I would just like to ask one more question.

Picking up where the gentleman from New York [Mr. Green] left off before, we have a very serious problem in the Northeast region and it may be in other sections of the country as well, that was the point alluded to before, and that is that there is a large-scale practice of spicing waste oil with toxic wastes and then using it and selling it as recycled oil. That concerns me deeply, and I am asking a question as to whether the chairman of the subcommittee perhaps can assure us that no way is this going to permit that practice to proliferate.

Mr. ECKART of Ohio. I yield to the gentleman from New Jersey [Mr. Florio] for his response.

Mr. FLORIO. That was the specific reason why that written language was regarded by some as offensive. The concept of recycling is open to interpretation. Times Beach, MO, is a problem that was caused by recycled oil put on roads. The problem that you and Mr. Green are very concerned about, appropriately in New York, about recycled home heating oil with toxic wastes in it being burned in home furnaces likewise is capable of being interpreted as recycled oil.

That is why the gentleman struck that language and included that the only way that one can come under the provisions of this amendment is through the publication of the regulation which is about to be published.

Mr. ECKART of Ohio. I yield to the gentleman from New York.

Mr. MOLINARI. I have serious questions, but I understand that the gentleman from New Jersey, the chairman of the subcommittee has a request? Am I correct?

I was going to ask that this be laid aside; I thought the gentleman from New Jersey was going to make a request along those lines.

Mr. ECKART of Ohio. I yield to the gentleman from New Jersey for his response [Mr. ROE].

Mr. ROE. I thank the gentleman.

We understand what issue is a people have been speaking eloquently about what the problems are, but nobody has anything in writing. It seems to me it might be profitable if the gentleman would defer this amendment until we can get it down on paper so the Members know what they are voting for.

So if it was withdrawn temporarily until the paperwork could be adjusted, I think it would speed up the action and people would understand what it is about. There is confusion about this.

Mr. ECKART of Ohio. Mr. Chairman, on my time, I would request unanimous consent that the amendment and my amendment to the amendment be withdrawn at this time, without prejudice, to be offered later in this title.

The CHAIRMAN. The Chair is not sure exactly what that language means and the ramifications of it.

Is there objection to the request of the gentleman from Ohio for withdrawal of the amendment?

There was no objection.

The CHAIRMAN. Are there further amendments to title 1?

The Chair will now respond to the gentleman's second request.

There would not be prejudice if there is no objection. The Chair would rule that the gentleman could reserve his right to offer that amendment when we go on to another title.

Mr. ECKART of Ohio. That was the intention of my request, Mr. Chairman.

The CHAIRMAN. Without objection, so ordered.

There was no objection.

The CHAIRMAN. Are there additional amendments to title 1?

AMENDMENT OFFERED BY MR. WIRTH

Mr. WIRTH. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WIRTH: Page 129 line 6, after "standards" insert "and state siting standards or laws."

Page 129, line 21, after the period, insert: "In any case in which there is a promulgated State siting standard or law which is applicable to the remedial action, the provisions of subsection (j) shall govern the use of such State siting standard or law, except where such State standard law may effectively result in the prohibition of land disposal of a hazardous substance, pollutant or contaminent.

Page 135, lines 14. 15, delete all after "plan" through "costs" and insert in lieu thereof: "Permits may not significantly increase the estimated costs of the action."

Page 135, line 11, after the period insert: "The State may require the party responsible for obtaining any permit to file an application for such permit at any reasonable time after the selection of the remedial action."

Mr. WIRTH (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Colorado?

There was no objection.

Mr. WIRTH. Mr. Chairman, this amendment is offered to perfect the treatment of Federal and State permits and more stringent State standards in remedial actions involving onsite cleanups.

The committees should be commended for moving a very long way from the complete preemption of State permits and standards contained in earlier versions of H.R. 2817.

The perfecting amendment has been worked out with the concurrence of the majority and minority, the EPA, the Justice Department, and many of those States most concerned.

It basically accomplishes three things: First, ensures that State standards and laws related to the siting of hazardous waste facilities are specifically included in the development of a remedial action.

The application of such laws in the final plan will be subject to the same narrow conditions for rejection as those outlined in the compromise, and further protects against States passing a complete ban on the land disposal of

hazardous wastes.

Second, the amendment ensures that a State's authority to review and issue a permit is protected by allowing for a State to require the filing of an application for a permit.

Third, clarifies the relationship of the remedial action plan with the terms of the permit by allowing for the possibility wherein an identified remedy may cost more than originally anticipated.

□ 2055

I believe that all parties have agreed to this amendment, Mr. Chairman. I would hope that my colleagues would also see fit to support and include this amendment in the very good compromise that has been worked out by the Commerce Committee and by the Public Works Committee.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. WIRTH. I am happy to yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, I just want to pay tribute to the gentleman who spent much of his efforts dealing with this bill on this subject, the question of States' rights.

I am pleased that things have been able to be worked out sufficiently that he is satisfied.

I certainly endorse the gentleman's efforts in this direction.

Mr. WIRTH. Mr. Chairman, I thank the gentleman very much.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. WIRTH. I am happy to yield to the gentleman from New Jersey.

Mr. ROE. Mr. Chairman, we want to compliment the gentleman for his splendid addition to the legislation. We have no objection to it.

Mr. WIRTH. Mr. Chairman, I thank the gentleman, and again commend the gentleman from New Jersey [Mr. FLORIO] and the others.

Mr. LENT. Mr. Chairman, will the gentleman yield?

Mr. WIRTH. I yield to the gentleman from New York.

Mr. LENT. Mr. Chairman, we have had an opportunity to go over the amendment. It is a good amendment. We want to commend the gentleman from Colorado for his ingenuity. We accept the amendment.

Mr. WIRTH. Mr. Chairman, I thank the gentleman also for his perseverance and patience in this enormously complicated problem of accommodating the concerns of 50 States, as well as that of a good Federal standard.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. WIRTH. I am happy to yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, do I understand, is this for more stringent State requirements?

Mr. WIRTH. Yes, it is. That is the intent of the amendment.

Mr. SNYDER. That is my understanding, also. We are pleased to accept the amendment.

Mr. WIRTH. Mr. Chairman, I thank the gentleman.

Mr. ECKART of Ohio. Mr. Chairman, will the gentleman yield?

Mr. WIRTH. I yield to the gentleman from Ohio.

Mr. ECKART of Ohio. Mr. Chairman, the gentleman's efforts have been virtually herculean in this regard, the countless meetings, the number of States surveyed, the interests locally to be protected have indeed been overwhelming and I applaud the gentleman taking that last necessary step to help us make a better bill and we are delighted to accept it.

Mr. WIRTH. Mr. Chairman, I thank the gentleman. The Governors have endorsed this. This is, of course, very sensitive and delicate to that relationship between the Federal Government and the States, and I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Colorado [Mr. WIRTH].

The amendment was agreed to.

The CHAIRMAN. Are there further amendments to title I?

AMENDMENT OFFERED BY MR. ECKART OF OHIO

Mr. ECKART of Ohio. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ECKART of Ohio: At the end of section 119, add the following new paragraph:

"(q) Nothing in this Act shall limit the Administrator in taking such action as may be necessary to assure continuous remedial action or to institute interim remedial action when it becomes necessary to reopen bidding or otherwise recontract for the performance of remedial action."

Mr. ECKART of Ohio (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from

Ohio?

There was no objection.

Mr. ECKART of Ohio. Mr. Chairman, as many of our colleagues know, Superfund cleanups all across the United States have been forced to be delayed while the debate goes forward. This adds a new subparagraph (q) which states simply that nothing in this act shall limit the Administrator in taking such action as may be necessary to assure continuous remedial action or to institute interim remedial action when it becomes necessary to reopen bidding, which may be the process because of the fact that cleanups have had to be suspended.

Mr. Chairman, I view this as mostly technical in nature. It is an amendment that was considered in the other body and accepted.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. ECKART of Ohio. I yield to my friend, the gentleman from New Jersey.

Mr. ROE. Mr. Chairman, we have reviewed this amendment. It is an improvement to the legislative process. I compliment the gentleman. We have no objection to it.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. ECKART of Ohio. I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, we are pleased to accept the amendment.

Mr. LENT. Mr. Chairman, will the gentleman yield?

Mr. ECKART of Ohio. I yield to the gentleman from New York.

Mr. LENT. Mr. Chairman, we have had an opportunity to go over the gentleman's amendment and we find it in good order. We have no objection over here.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. ECKART].

The amendment was agreed to.

The CHAIRMAN. Are there further amendments to title I?

There being none, the Clerk will designate title II.

The text of title II is as follows:

[NOTE. - Title II of H.R.3852 is previously reproduced and may be found at p.3750]

AMENDMENT OFFERED BY MR. TAUZIN

Mr. TAUZIN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. TAUZIN: Page 246, after line 4, insert the following:

(d) RECOVERY PROCESS.—For purposes of this subsection, the Administrator may approve a process, the primary purpose of which is to recover vanadium, cobalt, nickel, molybdenum, and alumina from waste in any form for commercial sale. If the Administrator approved such a process, any person who provides such waste to another person to carry out such process shall not be liable under CERCLA for any act or omission of a person other than the person who so provides the waste, which act or omission occurs after the waste is so provided.

Mr. TAUZIN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. TAUZIN. Mr. Chairman, this amendment has been cleared with both the majority and the minority. It refers to another recycling situation. The process involved here is a recycling of refinery catalyst substances that are used in the refining process.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I am happy to yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, we have reviewed the amendment and we find it acceptable.

Mr. LENT. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I am happy to yield to the gentleman from New York.

Mr. LENT. Mr. Chairman, we also find the gentleman's amendment acceptable.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Louisiana [Mr. TAUZIN].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. GLICKMAN

Mr. GLICKMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GLICKMAN: In the matter proposed to be added as section 310 to CERCLA, relating to citizens suits—

(1) Strike out subparagraph (B) of subsection (a)(1) of such section and insert in lieu thereof the following:

"(B) has contributed or is contributing to the actual or threatened release of any hazardous substance from a facility if such release may present an imminent and substantial endangerment to health or the environment; or";

(2) Strike out the second sentence of subsection (a) of such section; and

(3) Insert at the end of subsection (k) the following new sentence: "As used in this section the term 'release' means the discharge, deposit, injection, dumping, spilling, leaking, treating, storing, or placing of any hazardous substance into or on any land or water, except that such term shall not include any activity referred to in subparagraph (A), (B), (C), or (D) of section 101(22).".

Mr. GLICKMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Kansas?

There was no objection.

Mr. GLICKMAN. Mr. Chairman, I offer this amendment on behalf of the Judiciary Committee and also on behalf of the gentleman from New Mexico [Mr. Richardson]. It relates to the citizens suit provision. This is an important provision of the bill.

I should mention that the compromise bill which has been worked out so diligently with the gentleman from Michigan [Mr. Dingell], the gentleman from New Jersey [Mr. Roe], the gentleman from New Jersey [Mr. Howard], and the gentleman from New York [Mr. Lent], and the gentleman from Kentucky [Mr. Snyder], as well as the other committees, does do an excellent job in connection with the citizen suit provisions; but there is a slight change from what the Judiciary Committee originally proposed and I bring this change to the floor today for consideration by this body.

Section 207 of the compromse bill allows citizens to sue to prevent imminent and substantial endangerment to their health and environment. The compromise version allows these suits against only "hazardous waste sites," rather than against "any facility" from which hazardous substances are released, as had been recommended by the Judiciary Committee. The compromise also expands the provision by allowing suits to abate releases into the air.

The Judiciary Committee amendment would change this language by substituting the original Judiciary Committee language, thus allowing suits to abate releases of hazardous substances into the land or water—not the air—from any facility.

This is an important change, because hazardous waste disposal sites are not the only source of catastrophic releases. For example, under the compromise language, suits may not be available as to hazardous waste treatment sites. Also, releases from hazardous waste recycling operations would not be covered; nor would a train derailment which results in releases of hazardous substances.

It should not be forgotten that scores of sites are now on the National Priorities List [NPL] as a result of accidents or spills at facilities which are not in the business of disposing of hazardous substances. Many NPL sites were formerly treatment or storage facilities or manufacturing facilities.

For example, facilities have contaminated drinking water in Silicon Valley in California and in many other places in this country. The fact that these facilities were not "disposal sites" was no comfort to those who lived or worked near the facility.

For these reasons, the Judiciary Committee adopted a provision which encompasses releases from any facility. The committee believes that litigants should not be precluded from bringing suit if the source of the release is not a disposal site.

The focus of citizens suits should not be on the kind of facility that caused the release. The focus should be on the endangerment which results from the release.

Hazardous substance releases from any facility can result in catastrophes. Therefore, the Judiciary Committee's amendment is designed to allow persons to seek prevention or abatement of "imminent and substantial endangerments" from any facility.

Mr. RICHARDSON. Mr. Chairman, will the gentleman yield?

Mr. GLICKMAN. I yield to my colleague, the gentleman from New Mexico.

Mr. RICHARDSON. Mr. Chairman, I thank my colleague.

I rise in strong support of the amendment offered by the gentleman from Kansas on behalf of the Judiciary Committee and myself.

I offered a very similar amendment in the Energy and Commerce markup of the Superfund reauthorization legislation. While we were unsuccessful in passing this out of Energy and Commerce—the vote was 20-22—I am pleased that the compromise package we are considering today includes most of those provisions included in the amendment I offered earlier this year.

My only major concern with the existing language in the bill under consideration lies with the reference to the release from hazardous waste disposal sites. It is my understanding that this is not clearly defined in Superfund statutes and where it is mentioned—in RCRA—disposal site definitions exclude treatment and storage. The language in both my amendment and the Judiciary amendment would allow citizens to sue in the case of an actual or threatened release from any facility, including both treatment and storage facilities.

All actual or threatened releases of hazardous waste have the potential to present imminent and substantial danger to citizens and communities. I urge my colleagues to support the Judiciary Committee amendment to citizens' suits.

Mr. LENT. Mr. Chairman, I rise to speak against the amendment.

Mr. Chairman, first of all, I just want to try to correct what I think was an inadvertent mistake by the gentleman from New Mexico, that we had considered this amendment in the Energy and Commerce Committee. This particular amendment is not the amendment that we considered. We considered an amendment which was defeated in the Energy and Commerce Committee, but which is contained in the compromise language

Mr. RICHARDSON. Mr. Chairman, will the gentleman yield?

Mr. LENT. I yield to the gentleman from New Mexico.

Mr. RICHARDSON. Mr. Chairman, what was defeated in the Energy and Commerce Committee was an amendment I offered, 22 to 20. I think what is contained in this bill is a substantial improvement from the old Energy and Commerce amendment.

Now, I do want to state that the amendment that the gentleman from Kansas [Mr. GLICKMAN] is offering is not the same one the gentleman is referring to.

Mr. LENT. Mr. Chairman, I do not believe we ever considered a piece of legislation or an amendment that talked in terms of a waste disposal facility, which is the term that is used in the gentleman's amendment that is before us today, as opposed to a waste disposal site.

The Superfund should focus on dump sites, which is a far more limited term than facility.

The Glickman amendment would allow a suit against any facility which is defined very, very broadly, under the terms of the act to include such things as buildings, installations, pipes, pipelines, ditches, motor vehicles or aircraft. It is a very broad term.

We know that courts in ruling on section 106 of the act have found the meaning of imminent and substantial endangerment to be very broad and industries and others could find themselves being constantly dragged into court, even for threatened releases. Under the terms of this amendment, even threatened releases would be actionable.

Hundreds of thousands of industries have Federal environmental permits, mainly under the Clean Water and Clean Air Acts. All of these businesses are in violation of these permits from time to time and every time they are, they could be subject to a citizens' suit under the terms of this provision.

The backlog of Federal cases in the Federal district courts would be greatly increased by a likely inundation of suits if this amendment were to become law.

I am authorized to say by the gentleman from Ohio [Mr. KINDNESS], the ranking Republican on the applicable subcommittee of the Committee on the Judiciary that he shares my sentiments and also wanted me to express his opposition to this amendment.

Mr. SNYDER. Mr. Chairman, I move to strike the requisite number of words.

(Mr. SNYDER asked and was given permission to revise and extend his remarks.)

Mr. SNYDER. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Kansas [Mr. GLICKMAN].

If adopted, the gentleman's amendment would significantly expand upon the citizen suit provision contained in the compromise bill by allowing suits alleging an imminent and substantial endangerment to public health and the environment.

The compromise bill allows citizen suits for imminent and substantial endangerment, but only where the release or threatened release is associated with a hazardous waste disposal site.

That is critical, because that is what this bill is to deal with. The Superfund is to deal with hazardous disposal waste sites.

Mr. Chairman, all three committees with jurisdiction over this issue recognized the need for citizens to have access to the courts in connection with Superfund activities. The Committee on Energy and Commerce, Public Works and Transportation, and the Judiciary all included provisions allowing citizens to bring an action in court against any person alleging that they have violated a requirement of the act or against EPA or another Federal agency to require performance of a nondiscretionary duty under the act. Where we differed was over the so-called third leg of the citizen suit provision—the imminent and substantial endangerment suits. Energy and Commerce declined to include any authorization for suits alleging imminent and substantial endangerment.

The Judiciary Committee, on the other hand, included an extremely broad provision allowing such suits whenever there was a release or threatened release of hazardous substance alleged. Many of us on the Committee on Public Works and Transportation were concerned about the breadth of the judiciary provision because the act defines "release" and "hazardous substance" in extremely broad terms. Accordingly, we developed a middle ground which would allow such suits but only in connection with a hazardous waste disposal site, which is what we are dealing with in this bill. The position adopted by the Public Works Committee was eventually incorporated into the compromise bill.

In order to understand, Mr. Chairman, the mischief that may be caused by the amendment by the gentleman from Kansas, one has to understand that Superfund incorporates within the definition of hazardous substance all substances listed as being hazardous by a host of other environmental laws. Furthermore, the concept of a release or threatened release incorporates not only a catastrophic spill, but also a regulated discharge which may exceed the limits specified in a permit issued under the Clean Water Act, or other Federal environmental laws. As a consequence, adoption of the gentleman's amendment would, in effect, result in adding an imminent and substantial endangerment provision to all of the other environmental laws.

□ 2110

Let me just digress and suggest to my colleagues that if your sewage disposal plant which was legally permitted but exceeded the limits of the permit for any one time, they would come under the provision of that facility and all other types of legal facilities and concerns around the country.

We are dealing with cleaning up hazardous waste sites, and that is what we should limit this provision to, and not facility.

Furthermore, this would result in a program administered more by the courts than the EPA and, in the end, would divert Federal resources toward litigation. Frankly, I believe that the provisions in the compromise go further than we should have gone in providing access to the courts. I have agreed to that provision in our bill and, as a matter of fact, suggested it in our committee, because it was limited to hazardous waste sites.

I cannot support any further broadening of this provision which I believe will greatly weaken the clean-up program. Accordingly, Mr. Chairman, I urge my colleagues to oppose the amendment offered by the gentleman from Kansas.

Mr. FIELDS. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment offered by the gentleman from Kansas [Mr. GLICKMAN].

Mr. Chairman, there was much discussion on the issue of citizens suing for imminent and substantial endangerment in the Committee on Energy and Commerce, and that committee defeated this amendment. Because of my concerns and those of a number of my Energy and Commerce Committee colleagues, the gentleman from Ohio [Mr. OXLEY] and I were planning to offer an amendment to strike the existing language in H.R. 2817 on imminent and substantial endangerment as added by the Committee on Public Works and Transportation.

Perhaps our concerns can be somewhat addressed through a colloquy with the gentleman from Kentucky [Mr. SNYDER].

Mr. OXLEY. Mr. Chairman, will the gentleman yield?

Mr. FIELDS. I would be glad to yield to the gentleman from Ohio.

Mr. OXLEY. I thank the gentleman for yielding.

Mr. Chairman, I concur with the statements made by the gentleman from Texas and join him in opposing the Glickman amendment.

The amendment would act to delay the very cleanups we are trying to expedite through other provisions of H.R. 2817.

Through the amendment, we will massively increase the potential for litigation for "imminent and substantial endangerment," and the courts will have to determine exactly what that means on a case-by-case basis.

EPA will be forced to intervene in these suits in order to protect the integrity of the Superfund Program. This would waste both personnel and financial resources of the Agency that otherwise could be dedicated to site cleanup, as indeed they should be.

For these reasons, Mr. Chairman, I oppose the Glickman amendment with my colleague from Texas.

Mr. FIELDS. Mr. Chairman, at this time I would like to engage the gentleman from Kentucky [Mr. SNYDER] in a short colloquy so we can get some clarification regarding the language on imminent and substantial endangerment in H.R. 2817 as added by the Public Works Committee.

It is my understanding that the current language in the bill permits citizens to sue parties for the release or threatened release of a hazardous substance which presents an imminent and substantial endangerment at a "hazardous waste disposal site," rather than a "facility" as defined under CERCLA. Can the gentleman explain to me the difference between these terms as they would apply to citizen suits?

Mr. SNYDER. Mr. Chairman, if the gentleman will yield, let me assure the gentleman from Texas there is a very significant difference between a facility, as defined under CERCLA, and a hazardous waste disposal site. A facility as defined under section 101(a)(9) to mean:

> (A) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

This is quite different from a hazardous waste disposal site, which I understand to be a site primarily used for the disposal of hazardous waste.

Mr. OXLEY. Mr. Chairman, if the gentleman will yield, what does the gentleman from Kentucky see as the effect of the existing language, as opposed to the effect under the Glickman amendment?

Mr. SNYDER. If the gentleman would yield for a response, the effect is to limit citizen suits to the situations that Superfund was intended to deal with. The purpose of Superfund is to clean up hazardous waste disposal sites. Therefore, the purpose of the citizen suit provision should not be to reach those activities which may threaten public health or the environment as a result of the release of a hazardous waste from a disposal site such as a sewer plant which is out of compliance with its permit, or a motor vehicle, rolling stock, or aircraft.

Mr. OXLEY. Mr. Chairman, would the gentleman from Texas be willing to yield to the chairman of the Committee on Energy and Commerce for his opinion on this very important issue?

Mr. FIELDS. Yes, I would yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, the gentleman has directed a colloquy toward me and I believe I should respond by concurring in the comments of my good friend, the gentleman from Kentucky.

The language of the Glickman amendment would, I believe, clearly open up the citizen suit provision in our bill to go far beyond what I believe is the intent of our two committees for the Superfund.

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has expired.

(By unanimous consent, Mr. FIELDS was allowed to proceed for 4 additional minutes.)

Mr. RITTER. Mr. Chairman, will the gentleman yield?

Mr. FIELDS. I would be glad to yield to the gentleman from Pennsylvania.

Mr. RITTER. I thank the gentleman for yielding.

Mr. Chairman, I would just like to point out to my colleagues that the citizen suit provision, any citizen suit provision, including the citizen suit provision for a wastesite, was opposed in the Committee on Energy and Commerce and was defeated in the Committee on Energy and Commerce.

The reason for that was that citizen suits working parallel through the courts would sap into the resources of EPA and sap into the resources of cleanup programs, and we could end up with two parallel programs, one in the courts and one in the EPA.

What this amendment does is take an already significant compromise position and extend it far further.

I urge my colleagues to defeat this amendment.

Mr. FIELDS. Mr. Chairman, I would just like to thank the gentleman from Kentucky, the gentleman from Michigan, the gentleman from Pennsylvania, and also the gentleman from Ohio for participating in this colloquy.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Kansas [Mr. GLICKMAN].

The amendment was rejected.

□ 2120

The CHAIRMAN. For the information of the membership of the committee, we are now on title II. But there was an agreement to withdraw an amendment that the gentleman from Missouri [Mr. SKELTON] offered to title I, and it was agreed by unanimous consent that he would have the right to offer that amendment as modified once the compromise was reached. So we are now reverting to title I for this amendment only.

The Chair recognizes the gentleman from Missouri [Mr. SKELTON].

AMENDMENT OFFERED BY MR. SKELTON

Mr. SKELTON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SKELTON: Page 6, after line 20, insert the following new subsection:

(b) HAZARDOUS SUBSTANCE.—Section 101(a)(14)(C) of CERCLA is amended by inserting after "Congress" the following: "and not including used oil that is listed or identified as a hazardous waste under the Solid Waste Disposal Act if such used oil (i) is treated, managed, or recycled in such a way as to remove or render harmless the hazardous constituents contained in such used oil or such used oil does not contain hazardous constituents, and (ii) such used oil is in compliance with a final rule promulgated by the Administrator, which rule shall authorize the Administrator to order any corrective action necessary for any release of used oil.

Mr. SKELTON. Mr. Chairman, I move the adoption of this amendment which I might say is also cosponsored along with me by the gentleman from Texas [Mr. STENHOLM]. We have discussed this on both sides of the aisle.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. SKELTON. I am pleased to yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, just to make a clarification because there has been so much confusion, on this fifth line up from the bottom, the last word is "and," is that correct?

Mr. SKELTON. That is correct, and there is the number 2 after that.

Mr. FLORIO. I am happy to support the proposal in its present form.

Mr. LENT. Mr. Chairman, will the gentleman yield?

Mr. SKELTON. I yield to the gentleman from New York.

Mr. LENT. Mr. Chairman, I want to say I think the matter has been fully debated earlier this evening. This certainly clarifies the language of the amendment and we give it our full endorsement.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. SKELTON. I yield to the gentleman from New Jersey.

Mr. ROE. Mr. Chairman, we, too, have reviewed the revised language and it does meet the needs that were discussed. We have no objection on our side.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. SKELTON. I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, I want to thank the gentleman for withdrawing this amendment earlier and agreeing to the withdrawal. I think it is in much better form and is acceptable here.

Mr. GREEN. Mr. Chairman, will the gentleman yield?

Mr. SKELTON. I yield to the gentleman from New York.

Mr. GREEN. I thank the gentleman for yielding, and I, too, would like to thank him for withdrawing the amendment earlier. It did give me the opportunity to consult with staff of the EPA who are outside the Chamber, and they assured me that the amendment as it has been amended will not affect adversely the regulations that they have recently published with respect to waste oil and home heating oil, and particularly will not affect their ability to follow the paper trail to enforce those regulations.

Therefore, I withdraw my objection to the amendment and I will be happy to join in the gentleman's amendment.

Mr. SKELTON. Mr. Chairman, I would like to point out before moving the adoption of the amendment that the reason the gentleman from Texas and I had proposed this was for the small businesses that are involved. It would be a great boon to them.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri [Mr. SKELTON].

The amendment was agreed to.

Mr. HOWARD. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I do this to have a discussion with my colleagues.

First, I would like to express the thanks of our committees to all the Members of the House who have been very patient and cooperative as we have moved through this rather complex legislation. What we may have to offer by unanimous-consent request in a moment may be something that we could consider as all of us are attempting to have this session of this Congress end as quickly as possible.

We do know that we have a portion of title II, title III and title IV remaining on the Superfund legislation before we go to the Ways and Means provision and the taxing provision, which is title V, and which has three amendments, each of them being permitted 1 hour of debate.

Since we do not anticipate many further amendments this evening, what we are contemplating is a unanimous-consent request that we may be able to proceed with title II amendments for an additional 45 minutes, with title III amendments for 1½ hours, and title IV amendments for 30 minutes the remainder of this evening, at which time the Superfund portion of this other than the tax part would be completed. This would then permit the House tomorrow to be able to complete the remainder of the legislation so that it will be completely put to bed this weekend, and the important legislation we have for next week would not be put back.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. HOWARD. Mr. Chairman, I will be happy to yield to the gentleman from Kentucky [Mr. SNYDER] or anyone else who wishes to discuss this issue.

Mr. SNYDER. Mr. Chairman, I have no problem with the unanimous-consent request that the gentleman or someone over there is prepared to make.

I do have a little concern with the gentleman's representation that that is the end of the Superfund bill except for the tax title. I understood you to say that that would be the end of the Superfund provisions other than the tax title, and I do not want the Members to be perhaps confused, unless perhaps I am. I understand that there is a potential title VI coming after the tax title when the gentleman from Massachusetts [Mr. FRANK], intends to do great damage to our bill by offering a Federal cause of action.

Mr. FRANK. Mr. Chairman, will the gentleman yield?

Mr. HOWARD. I am happy to yield to the gentleman from Massachusetts.

Mr. FRANK. Mr. Chairman, I would like to endorse the first 80 percent of what the gentleman from Kentucky just said.

Mr. HOWARD. Mr. Chairman, what we are stating also rather than clock time is approximate minutes, feeling that there are some of these titles that may not take that many minutes and may actually cut the time down.

Mr. WRIGHT. Mr. Chairman, will the gentleman yield?

Mr. HOWARD. I am happy to yield to the majority leader, the gentleman from Texas [Mr. WRIGHT].

Mr. WRIGHT. As I understand it, the gentleman wants to ask unanimous consent that each of the remaining titles be limited to not more than a given number of minutes. I think that would be compatible with our agreements. We can make a judgment as we go along whether to complete it all tonight except for the tax title. We still could have the option of rising a little later if we chose to and carry it over until tomorrow. But at least we would have a limit on how many minutes would be consumed.

Is that the nature of the gentleman's request?

Mr. HOWARD. That is correct.

The CHAIRMAN. The Chair would ask the gentleman from New Jersey to restate the time he suggests for title II, III and IV.

Mr. HOWARD. Mr. Chairman, I would intend to ask unanimous consent that the remainder of title II be confined to 45 minutes duration, title III to 90 minutes duration and title IV to 30 minutes duration.

The CHAIRMAN. That would apply to debate time and, of course, that could not cut off amendments being offered beyond that time if there were additional amendments to be offered. It would cut off debate time only.

Mr. HOWARD. That is true.

The CHAIRMAN. Does the gentleman make that unanimous-consent request?

Mr. HOWARD. I will do that pending a statement by the gentleman from Ohio [Mr. ECKART] who wished me to yield to him. I will make it in a moment.

Mr. ECKART of Ohio. Mr. Chairman, will the gentleman yield?

Mr. HOWARD. I yield to the gentleman from Ohio.

Mr. ECKART of Ohio. Mr. Chairman, I see the only Member that we did not speak to is the gentleman from Pennsylvania [Mr. EDGAR]. We have surveyed the gentleman from Minnesota [Mr. SIKORSKI], and the gentleman from New Mexico [Mr. RICHARDS], and others who have offered amendments. I believe this time is consistent with what they viewed to be their needs to present their cases adequately.

The CHAIRMAN. Does the gentleman from New Jersey [Mr. HOWARD] now wish to propound that as a unanimous-consent request?

Mr. HOWARD. Mr. Chairman, I ask unanimous consent that the time for title II be limited to not more than 45 minutes, title III not more than 90 minutes, and title IV not more than 30 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

Mr. EDGAR. Mr. Chairman, reserving the right to object, I have an amendment to title II and I wondered how many amendments there were to this title before agreeing to this.

Mr. BROYHILL. Mr. Chairman, will the gentleman yield?

Mr. EDGAR. I yield to the gentleman from North Carolina.

Mr. BROYHILL. Mr. Chairman, I wanted to ask the gentleman from New Jersey, does that mean that the Ways and Means Committee amendment would come up tomorrow?

Mr. HOWARD. Mr. Chairman, will the gentleman yield?

Mr. EDGAR. I yield to the gentleman from New Jersey.

Mr. HOWARD. Should we be able to complete these, yes.

Mr. BROYHILL. Have the members of the Committee on Ways and Means been advised of this action, because there are a number of Members that thought that the amendment would not come up until next week.

Mr. HOWARD. Certainly there have been some members of the Ways and Means Committee who are apprised of this. Staff members speaking for members of the Ways and Means Committee have been apprised of this, and I believe that it is their desire, if the gentleman will yield, to be able to handle this tomorrow because they know that that committee has a great deal of work to do next week with the so-called tax reform legislation. So I believe that they are very anxious to be able to have completed this before next week.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. EDGAR. Mr. Chairman, I am glad to yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, in view of the fact that we are working this time out here, and in view of the fact that after the Ways and Means, which is limited to 2 hours under the rule, and the gentleman from Massachusetts [Mr. FRANK] does intend apparently to offer a title VI Federal cause of action, if he is here, I wonder if he would agree to an hour on that also while we are doing this and Members could agree and we could get a pretty good idea when they will get out of here tomorrow.

Mr. EDGAR. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The CHAIRMAN. Under the unanimous consent request of the gentleman from New Jersey [Mr. HOWARD], the remaining time on title II will be for a point of time up to 45 minutes, title III up to 90 minutes, and title IV up to 30 minutes. Any time for rollcalls does not apply against those time constraints, it is for debate only.

The Chair is proceeding under the 5-minute rule and is going to be asking for amendments to title II at this time.

AMENDMENT OFFERED BY MR. BROYHILL

Mr. BROYHILL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BROYHILL: Page 264, after line 4, insert:

SEC. 216. CERTIFICATION OF COMPLIANCE WITH FINANCIAL RESPONSIBILITY.

(a) EXTENSION.—In the case of any facility used for the land disposal of hazardous waste, notwithstanding the termination of interim status of the facility by reason of the failure of the owner or operator of the facility to file a certification under section 3005(e)(2)(B) of the Solid Waste Disposal Act, such interim status shall be treated as continuing in effect if the owner or operator on or before November 8, 1986, filed with the Administrator:

An adequate certification under section 3005(e)(2)(B) of such Act of compliance with groundwater monitoring requirements as of November 8, 1985, and financial responsibility requirements (except for the liability requirements of 40 CFR § 265.147); and applied for final determination regarding the issuance of a permit.

(b) Other Facilities Covered.—An extension of interim status shall also apply to any facility used for land disposal of hazardous waste which had been operating pursuant to interim status under section 3005(e) of the Solid Waste Disposal Act, if the facility satisfies the following requirements:

(1) The owner or operator of the facility applied for a final determination regarding the issuance of a permit on or before November 8, 1985; and

(2) The owner or operator was in compliance with the groundwater monitoring requirements and the financial responsibility requirements (except for the liability requirements of 40 CFR § 265.147) on November 8, 1985, but failed to certify as required under section 3005(e)(2)(B) of the Solid Waste Disposal Act.

(3) The owner or operator, after notice is given by the Administrator submits documentation in a form satisfactory to the Administrator, in his sole discretion, of compliance with the groundwater monitoring requirements and financial responsibility requirements (except the liability requirements of 40 CFR § 265.147) as of November 8, 1985. This documentation may include a notarized statement by a professional engineer not an employee of the owner or operator who corroborates such certification. The notice by the Administrator shall be given to all affected land disposal facilities within 45 days of enactment of this Act. Responses must be received no later than 45 days thereafter. The Administrator, in his sole discretion, may reject such documentation if it appears that there is no clear and convincing evidence that the facility was in compliance on November 8, 1985.

(c) Additional Criteria.—Subsection (a) or (b) shall not apply to any facility used for land disposal of hazardous waste which has been operating pursuant to interim status under section 3005(e) of the Solid Waste Disposal Act unless the facility satisfies at least one of the following criteria as well:

(1) The owner or operator of the facility demonstrated that liability insurance policies on which such compliance would have been based were cancelled after November 8, 1984 (or the owner or operator received, after such date, a notice from the issuer of any such policy of the issuer's intent not to renew the policy);

(2) The owner or operator of the facility had sales or revenues of less than $5,000,000 for all lines of business in the firm's fiscal year preceding July 15, 1982;

(3) The facility is located in a State for which an authorized State program was in effect under section 3006 of the Solid Waste Disposal Act and, under such program, financial responsibility requirements pursuant to the Solid Waste Disposal Act did not become effective before November 8, 1984; or

(4) The owner or operator of the facility has demonstrated to the Administrator that he has made a good faith effort to obtain the insurance necessary to satisfy all applicable financial responsibility requirements pursuant to the Solid Waste Disposal Act and provides documentation of that effort which is satisfactory to the Administrator.

(d) The extension provided in subsection (a) or (b) shall not extend for more than 12 months after enactment of this act, unless the Administrator determines that because of a constrained insurance market, an additional 12 months extension is necessary.

Mr. BROYHILL (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. DINGELL. Mr. Chairman, I reserve a point of order against the amendment.

☐ 2135

Mr. BROYHILL. Mr. Chairman, the purpose of this amendment is to correct a problem that has resulted from amendments that were made to the RCRA bill last year. Now, these amendments that were made last year were in good faith; had the purpose of assuring that RCRA facilities had the necessary liability insurance.

This liability insurance requirement came into effect on November 8, 1985. Well, as Members generally know, liability insurance and the industry's problems are very much in flux; there is an inability on the part of many people to get liability insurance, not only waste-disposal sites, but also many other kinds of industries and other processors and so forth.

What has happened is that the November 8 date has come along, and that a number of these facilities have found that although they were operating under the law, they were operating with monitoring wells and were making all of the various requirements that exist, doing all of the various things they are required to do under the law, they nevertheless were going to have to go out of business because of the liability insurance requirement.

I am offering this amendment for that reason.

Mr. Chairman, at this point I ask unanimous consent to withdraw my amendment, and reserve the right to offer it tomorrow.

The CHAIRMAN. The Chair will state to the gentleman that the problem is we will be leaving title II, obviously, within a short period of time.

Is there objection to the gentleman's reserving his right to offer the amendment tomorrow?

Mr. BROYHILL. Mr. Chairman, I ask unanimous consent to offer the amendment tomorrow.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

Mr. FLORIO. Mr. Chairman, reserving the right to object to the unanimous-consent request of the gentleman from North Carolina [Mr. BROYHILL] to offer his amendment tomorrow, can the gentleman clarify his request?

Mr. BROYHILL. Mr. Chairman, if the gentleman will yield, I was withdrawing the amendment at this time at the request of Members who have not had a chance to look at the amendment; but I did want to reserve the right to offer the amendment again tomorrow, after Members have had a chance to review the amendment.

Mr. FLORIO. Mr. Chairman, my understanding of the unanimous consent request that had been previously agreed to was that we would be in title V and title VI tomorrow.

With that understanding, once I agreed to those limitations, that the time tomorrow would be exclusively used for title V and title VI, I would be forced to object.

The CHAIRMAN. Objection is heard.

Mr. BROYHILL. Mr. Chairman, I still would ask unanimous consent to withdraw my amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

AMENDMENT OFFERED BY MR. RICHARDSON

Mr. RICHARDSON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. RICHARDSON: Page 197, after line 21, insert:

"(10) PUBLIC PARTICIPATION.—The Administrator shall promulgate regulations under this section regarding public participation whenever the Administrator undertakes or orders corrective action under this subsection. Such regulations shall provide for public participation equivalent to the public participation provided under section 117 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Such regulations shall be issued within 180 days after the enactment of this paragraph.".

Mr. RICHARDSON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Mexico?

There was no objection.

Mr. RICHARDSON. Mr. Chairman, I would like to note that this amendment is substantially modified. It contained two parts; one dealing with community right to know, the other with public participation to the provisions on underground storage tank provisions.

Now the amendment only contains a provision on public participation. I would like to commend my colleagues in both the Committee on Energy and Commerce and the Committee on Public Works for including provisions in this legislation to clean up leaking underground storage tanks.

The debate over this issue has been extensive, but the result has been worth it. The estimated 80,000 leaking tanks represent a serious and growing health problem which must be addressed without unfairly penalizing the small owners and operators of the corner gas station.

The bill before us accomplishes both of these worthy goals.

I further commend my colleagues for including language that I offered as an amendment to H.R. 2817, which will allow emergency and permanent relocation alternative water supplies and health assessments in the event of an underground tank leak.

Today I would like to add one more provision to the section of the bill. Under Superfund, there are provisions for public hearing and input into development of cleanup plans. This is not explicit in the RCRA language on tank leaks included in the bill we are now considering.

My amendment would instruct the Administrator to promulgate regulations to allow for public participation whenever he undertakes or orders corrective action for tank leaks.

It will in no way affect the private party which willingly undertakes cleanup, as it will only apply in situations where EPA has to order a responsible party to clean up a spill; or when EPA itself has to clean up a spill.

Mr. Chairman, I would like to share a few illustrations with my colleagues:

A 3,000-gallon tank leak in Provincetown, MA, polluted the city's ground water resulting in direct and indirect costs to the residents of over $25 million.

In 1978, a leak of more than 30,000 gallons in East Meadows, NY, resulted in the permanent relocation of 23 families.

A 10,000-gallon leak in Lee, ME, has rendered one-quarter of the town's water supply undrinkable.

In my home State of New Mexico, an estimated 162,000 liters of unleaded gasoline leaked from an abandoned tank. Ground water in the area contained benzene concentrations 1,000 times the State ground water standard.

Mr. Chairman, when entire neighborhoods have to move because they have hazardous benzene in their basements, when entire cities cannot drink their water, when taxpayers have to pay to put in a completely new water system for their towns, I would say there is a significant public interest in the outcome of the cleanup plan.

Once again, I would like to note that my amendment does not contain the initial provision that deals with community right to know. It simply keeps the provision of public participation, and I would hope the House supports my amendment.

Mr. LENT. Would the gentleman yield?

Mr. RICHARDSON. I yield to the gentleman.

Mr. LENT. I have not had much of an opportunity to look at this amendment, but it indicates that there would be a public hearing before a leaking underground storage tank were to be cleaned up?

Mr. RICHARDSON. The gentleman is correct. What it basically does is increase the options for the public in that community to participate in any decision that is involved in an emergency situation.

Mr. FIELDS. Would the gentleman yield?

Mr. RICHARDSON. I yield to the gentleman.

Mr. FIELDS. I appreciate that very much.

Mr. Chairman, I think public participation in and community notification of petroleum tank leak cleanups are worthwhile objectives, but it is my understanding that that is already provided for in RCRA.

So how does the gentleman's amendment differ from what is already in RCRA?

Mr. RICHARDSON. Well, in my judgment, the standard in RCRA is quite deficient; it is not clearly spelled out, and I think what this amendment does is it clarifies exactly what we mean.

Mr. FLORIO. Will the gentlman yield?

Mr. RICHARDSON. I yield to the gentleman.

Mr. FLORIO. Mr. Chairman, as I understand what the gentleman is advocating, is that when a cleanup plan is put together by the agency pursuant to this new authority that we are including in the bill, that EPA would be required under your provision to promulgate regulations to provide for a public comment period on the plan for cleaning up the waste site.

Mr. RICHARDSON. That is entirely correct.

Mr. FLORIO. I think that is an eminently reasonable amendment.

Mr. RICHARDSON. I do not see this being a dramatic departure from what we are trying to do. It does increase the public participation.

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. FLORIO and by unanimous consent, Mr. RICHARDSON was allowed to proceed for 2 additional minutes.)

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Mr. SLATTERY. Mr. Chairman, will the gentleman yield?

Mr. RICHARDSON. I yield to the gentleman from Kansas.

Mr. SLATTERY. I thank the gentleman for yielding.

Mr. Chairman, would the gentleman explain how this would practically affect a cleanup effort on an individual site, for example? Say, for example, a site has been identified, a leaking underground storage facility, it is leaking, there is a problem that needs to be cleaned up.

Now what would the gentleman's amendment do in that instance? As I read it, as I understand it in just the few minutes that we have had to review it, it appears the gentleman would require a public hearing of sorts to give the public an opportunity to express itself on the cleanup of an individual site. Is that the intention of the gentleman?

Mr. RICHARDSON. That is the gentleman's intention. What I would like to do is simply require the administrator to promulgate the existing regulations, but to advise the public what the situation is through a period of public comment. Now the provisions that I deleted related to the community right-to-know provision which is part of many other provisions in the bill.

Mr. SLATTERY. If the gentleman would yield further then, if the EPA identified a leaking storage tank in Holton, KS, and another one, maybe several others, in the same city or in Sebatha, KS, then you are suggesting the EPA should give notice in those communities for every individual cleanup effort and go through this process of public notice, is that what the gentleman is suggesting?

Mr. RICHARDSON. In essence, yes, but I do not think in any way this would increase the possibility of cleanups being delayed. I would rather err on the side of the public knowing as much as possible and having an opportunity to participate and comment as much as possible.

The CHAIRMAN. The time of the gentleman from New Mexico [Mr. RICHARDSON] has expired.

(On request of Mr. SLATTERY and by unanimous consent, Mr. RICHARDSON was allowed to proceed for 1 additional minute.)

Mr. SLATTERY. Mr. Chairman, will the gentleman continue to yield?

Mr. RICHARDSON I yield to the gentleman.

Mr. SLATTERY. I know that the gentleman's intentions are certainly honorable and well intentioned, there is no question about that, but my concern is that if we require this kind of procedure, it is going to be unduly cumbersome for the EPA, and it seems to me that the bottom line is that we may in fact delay the cleanup of some dangerous sites. If you have to go through this cumbersome public notice, public notification process, that is my concern. I hope the gentleman understands. We share the same objective, which is to clean up these sites expeditiously. I would rather the EPA be spending its time out there cleaning up the site than going through a cumbersome notification procedure.

Mr. DINGELL. Mr. Chairman, I move to strike the last word, and I rise in opposition to the amendment.

Mr. Chairman, I would like the attention of my colleagues in the House and also the attention of the gentleman, because I want the House to understand this issue.

The amendment applies the requirement of public participation to the cleanup of leaking underground tanks. The committee has received estimates that there are something on the order of 3 million of these leaking underground tanks which need to be cleaned up.

The gentleman's amendment would apply the same regulations for public participation as provided in section 117 of CERCLA, which is the basic statute upon which we labor tonight. The gentleman will find that this would require the following acts, by the Administrator of EPA in the regulation which he would be required to promulgate under the language of the amendment.

First of all, there would have to be a plan promulgated in each instance. Second of all, on the basis of that plan, it would be required that there be the issuance of a public notice giving an appropriate period of time for public comment.

So we have now the plan and the public notice—remember this is in something on the order of 3 million or 4 million cases in the country.

Then a public hearing would be required in which there would have to be public participation, opportunity for presentation of oral statements, and for presentation of written statements. It is not inconceivable that there would have to be possibly two hearings, one in this area in Washington, and perhaps one in the place where the tank was.

There would then possibly be a requirement for cross examination. Last of all, when the final order was issued, there would have to be a formal record which would be kept which would then be subject to judicial review if a final order was issued at any point during this procedure. And it is not beyond the realm of possibility, given the way the courts, lawyers, and the administrative process work, that there could be more than one final order which could obtain judicial review. The consequences of this amendment, and I want to say to my good friend from new Mexico, I am sure he is doing this in good faith, and he is a very valuable member of our committee for whom I have great respect and affection, it is that in each of the 3 or 4 million cases of these leaking underground tanks a massive expenditure of time would occur, a massive expenditure of money would take place, a prodigious effort by lawyers who would be quite delighted by this event, and the Superfund funds which we are going to gather up at such an extortionate tax rate upon American business, would largely be diverted to the extremely unfortunate purpose of requiring, regrettably, to support again massive litigation and administrative proceedings in each of the 3 or 4 million of these leaky underground tanks.

Now I know my good friend does not intend this, but the consequences, I think, both to the program, to the administrative process, and everybody else is, I believe, intolerable. The number of administrative law judges required to administer this would probably equal the number of personnel in at least one army division, and the time to be consumed in cleaning up the mess, which we all recognize is one jeopardizing the health and well-being of the American people, would be prolonged probably at least through the next millenium.

I would urge my colleagues to reject this amendment and to give the gentleman an opportunity perhaps to consult with the committee. We will try to assist him in coming forward with a proposal which will make better sense and which will help him in achieving his goal of public participation.

Mr. SLATTERY. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to my good friend from Kansas.

Mr. SLATTERY. I thank the chairman for yielding.

I would just like to associate myself with the chairman's remarks. I think he has hit the nail right on the head. It seems to me we should also go on to point out that in the next 14 months the Environmental Protection Agency will have to promulgate regulations in this area setting out how we are going to actually clean up underground storage tanks, and in that period of time the public will be given a great opportunity to be heard on this issue.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DINGELL] has expired.

(On request of Mr. SLATTERY and by unanimous consent, Mr. DINGELL was allowed to proceed for 1 additional minute.)

Mr. SLATTERY. Will the gentleman continue to yield?

Mr. DINGELL. I continue to yield to the gentleman.

Mr. SLATTERY. I just want to add, Mr. Chairman, that I associate myself with the remarks of the chairman.

Mr. DINGELL. The gentleman is correct. Let us have public participation on the rules and regulations with regard to cleanup rather than on each instant case.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DINGELL] has again expired.

(By unanimous consent, Mr. DINGELL was allowed to proceed for 2 additional minutes.)

Mr. RITTER. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Pennsylvania.

Mr. RITTER. I thank the gentleman for yielding.

Mr. Chairman, I think the gentleman hit the nail on the head. The fact remains that this program is brand new to begin with for the Superfund. The program in RCRA is brand new. If anyone has been over to EPA and seen how many staff they have working on developing, first, the ground rules for the program, and, second, given the possibility of 80,000 to 3 million leaking underground storage tanks, the task for EPA starting from scratch in this whole area is monumental. But it also may be unnecessary.

Gasoline in its various leaked locations around the country is remarkably similar and quite different from the soup that comes out of a Superfund site, and it may well be that the kind of public input that are going into the RCRA Program development are quite sufficient to take care of the idea of having public input to a leaking underground storage tank program, making this kind of amendment redundant in the extreme.

I know the gentleman has worked hard in the area of underground storage tanks and is very well intentioned here, but I am sure he is not of the intention to wrap up the entire EPA in this particular kind of amendment.

I yield back to the gentleman.

Mr. DINGELL. Mr. Chairman, I yield to my dear friend from New Mexico whose name I mentioned and for whom I have the most intense respect and affection, and then I will yield to the gentleman from Texas [Mr. STENHOLM] and then to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, would the gentleman yield so that I might be of assistance at this time?

Mr. DINGELL. I would be happy to yield to either gentleman.

The CHAIRMAN. The time that the gentleman was intending to yield has now expired.

(On request of Mr. FLORIO and by unanimous consent, Mr. DINGELL was allowed to proceed for 2 additional minutes.)

Mr. FLORIO. Mr. Chairman, would the gentleman yield?

Mr. DINGELL. I yield to the gentleman from New Jersey.

Mr. FLORIO. It may very well be, Mr. Chairman, that this discussion has been very illuminating and very helpful. I know what the gentleman's sincere motivation is. He wants to get public participation into the process of having some input from the community on these cleanup programs. The gentleman from Michigan's explanation has raised to my attention an interpretation of this that may very well suffice even without the benefit of the gentleman's amendment.

The gentleman makes reference to section 117 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 which is Superfund. We are now incorporating into Superfund the leaking underground storage tank provision which therefore becomes part of that act. Therefore, cleanups pursuant to this act, including the new section of the act, are then going to have to be conducted in accordance with section 117 of the Comprehensive Environmental Response, Compensation, and Liability Act which provides for the protections of public input that the gentleman is interested in.

If my interpretation is correct, and I believe it is, the gentleman's amendment is not needed and his purpose is achieved.

And I thank the gentleman for yielding.

Mr. DINGELL. If the gentleman would permit, the underground tank section, the gentleman will recall, is an amendment to RCRA and not to CERCLA. But I will tell the gentleman from New Jersey, for whom I have great respect and affection, and also the gentleman from New Mexico, that before rules and regulations of this magnitude are issued, there has to be opportunity for public notice, testimony, that sort of thing. I do not believe that EPA would be frivolous in bringing forward rules and regulations to deal with a point as important as this without having notice, hearing, and opportunity for public participation on this generic question. And I would certainly be highly supportive of that. I think with that thought in mind the gentleman's amendment has served a most useful purpose, and I now yield to my dear friend from New Mexico.

The CHAIRMAN. The time of the gentleman from Michigan has again expired.

(By unanimous consent, Mr. DINGELL was allowed to proceed for 1 additional minute.)

Mr. RICHARDSON. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from New Mexico.

Mr. RICHARDSON. I thank the gentleman for yielding.

Mr. Chairman, I take it from his last comment that the chairman is still opposed to the amendment but is supportive of the spirit.

Mr. DINGELL. To indicate it is hardly mildly opposed, but I understand the purpose of the gentleman. It is a good one, and I believe we can have it carried out if the committee will reject the amendment.

Mr. RICHARDSON. I thank the chairman. I am simply trying to err on the side of allowing the public the opportunity to speak out. I do not believe that we are going to have a massive bureaucratic fiasco here. We are dealing with probably the most important environmental disaster in the next 20 years, and I think we should err on the side of having the public's right to know. That is all I wish to do. But I respect the chairman's view that

EPA may be too overbureaucratized. But I do not think that is the case. I do want to vote on my amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Mexico [Mr. RICHARDSON].

The amendment was rejected.

AMENDMENT OFFERED BY MR. SMITH OF NEW JERSEY

Mr. SMITH of New Jersey. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment Offered By Mr. SMITH of New Jersey:

At the end of Title II add the following new section:

SEC. 214. STUDY OF JOINT USE OF TRUCKS.

(a) STUDY.—The Administrator, in consultation with the Secretary of Transportation, shall conduct a study of problems associated with the use of any vehicle for purposes other than the transportation of hazardous substances when that vehicle is used at other times for the transportation of hazardous substances. At a minimum, the Administrator shall consider—

(1) whether such joint use of vehicles should be prohibited, and

(2) whether, if such joint use is permitted, special safeguards should be taken to minimize threats to public health and the environment.

(b) REPORT.—The Administrator shall submit a report, along with recommendations, to Congress on the results of the study conducted under subsection (a) not later than 180 days after the date of the enactment of this Act.

Mr. SMITH of New Jersey (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

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Mr. SMITH of New Jersey. Mr. Chairman, this amendment requires the Administrator in consultation with the Secretary of Transportation to conduct a study of the problems inherent in the use of using the same trucks or other vehicle for the transportation of hazardous materials and other substances such as sludge.

The amendment requires the Administrator to consider whether joint use of the vehicles should be proscribed or, if it is to be permitted, what safeguards should be promulgated to minimise risks to health and the environment.

I became concerned about this problem when I learned that a sludge hauler in my district who is land applicating sludge at a sod farm in Monmouth County is using the same trucks to haul hazardous wastes.

I think the potential for harm is obvious. I'm sure that Members are aware that many States have few if any regulations relevant to sludge—which is increasingly being used by farmers for a variety of crops. The issue of dual use of trucks and other vehicles should be addressed and I believe this study will become a benchmark for subsequent action by law or regulation.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. SMITH of New Jersey. I yield to the gentleman from New Jersey.

Mr. ROE. We have reviewed the amendment. It is a splendid addition to the bill. We have no objection to it on this side.

Mr. LENT. Mr. Chairman, will the gentleman yield?

Mr. SMITH of New Jersey. I yield to the gentleman from New York.

Mr. LENT. We have had an opportunity to examine the gentleman's amendment. As I understand, it is a study of the joint use of trucks.

Mr. SMITH of New Jersey. The gentleman is correct.

Mr. LENT. We would have no objection to that.

Mr. ECKART of Ohio. Mr. Chairman, will the gentleman yield?

Mr. SMITH of New Jersey. I yield to the gentleman from Ohio.

Mr. ECKART of Ohio. We have examined the amendment, we view it to be an important addition to the bill, and we accept it.

Mr. SMITH of New Jersey. I thank the gentleman.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. SMITH of New Jersey. I yield to the gentleman from Kentucky.

Mr. SNYDER. We are in agreement with the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey [Mr. SMITH].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. LA FALCE

Mr. LAFALCE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LAFALCE: Page 264, after line 4, insert:

"SEC. 216. LOVE CANAL PROPERTY ACQUISITION.

(a) CONGRESSIONAL FINDINGS.—

(1) The area known as Love Conal located in the city of Niagara Falls and the town of Wheatfield, New York, was the first toxic waste site to receive national attention. As a result of that attention Congress investigated the problems associated with toxic waste sites and enacted Superfund legislation to deal with these problems.

(2) Because Love Canal came to the nation's attention prior to the passage of Superfund and because the Superfund was not available to compensate for all of the hardships endured by the citizens in the area, Congress has determined that special provisions are required. These provisions do not affect the lawfulness, implementation or selection of any other response actions at Love Canal or at any other facilities.

(b) AMENDMENT OF SUPERFUND.—Title III of the Comprehensive Environmental Response Compensation and Liability Act of 1980 is amended by adding the following new section at the end thereof:

"SEC. 310. LOVE CANAL PROPERTY ACQUISITION.

"(a) ACQUISITION OF PROPERTY IN EMERGENCY DECLARATION AREA.—The Administrator of the Environmental Protection Agency (hereinafter referred to as the 'Administrator') may make grants not to exceed $2.5 million to the State of New York (or to any duly constituted public agency or authority thereof) for purposes of acquisition of private property in the Love Canal Emergency Declaration Area. Such acquisition shall include (but shall not be limited to) all private property within the Emergency Declaration Area, including non-owner occupied residential properties, commercial, industrial, public, religious, non-profit, and vacant properties.

"(b) PROCEDURES FOR ACQUISITION.—No property shall be acquired pursuant to this section unless the property owner voluntarily agrees to such acquisition. Compensation for any property acquired pursuant to this section shall be based upon the fair market value of the property as it existed prior to the emergency declaration. Valuation procedures for property acquired with funds provided under this section shall be in accordance with those set forth in the agreement entered into between the New York State Disaster Preparedness Commission and the Love Canal Revitalization Agency on October 9, 1980.

"(c) STATE OWNERSHIP.—The Administrator shall not provide any funds under this section for the acquisition of any properties pursuant to this section unless a public agency or authority of the State of New York first enters into a cooperative agreement with the Administrator providing assurances deemed adequate by the Administrator that the State or an agency created under the laws of the State shall take title to the properties to be so acquired.

"(d) MAINTENANCE OF PROPERTY.—The Administrator shall enter into a cooperative agreement with an appropriate public agency or authority of the State of New York under which the Administrator shall maintain or arrange for the maintenance of all properties within the Emergency Declaration Area that have been acquired by any public agency or authority of the State. Ninety (90) percent of the costs of such maintenance shall be paid by the Administrator. The remaining portion of such costs shall be paid by the State (unless a credit is available under Section 104 (c). The Administrator is authorized, in his discretion, to provide technical assistance to any public agency or authority of the State of New York in order to implement the recommendations of the habitability and land-use study in order to put the land within the emergency declaration area to its best use.

"(e) HABITABILITY AND LAND USE STUDY.—The Administrator shall conduct or cause to be conducted a habitability and land-use study. The study shall (1) assess the risks associated with inhabiting of the Love Canal Emergency Declaration Area; (2) compare the level of hazardous waste contamination in that Area to that present in other comparable communities; and (3) assess the potential uses of the land within the Emergency Declaration Area, including but not limited to residential, industrial, commercial and recreational, and the risks associated with such potential uses. The Administrator shall publish the findings of such study and shall work with the State of New York to develop recommendations based upon the results of such study.

"(f) FUNDING.—For purposes of section 111 and 221(c) of this Act, the expenditures authorized by this section shall be treated as a cost specified in section 111(c).

"(g) RESPONSE.—The provisions of this section shall not affect the implementation of other response actions within the emergency declaration area that the Administrator has determined (before enactment of this section) to be necessary to protect the public health or welfare or the environment.

"(h) DEFINITIONS.—For purposes of this section:

"(1) EMERGENCY DECLARATION AREA.—The terms 'Emergency Declaration Area' and 'Love Canal Emergency Declaration Area' mean the Emergency Declaration Area as defined in section 950, paragraph (2) of the General Municipal law of the State of New York, Chapter 259, Laws of 1980, as in effect on the date of the enactment of this section.

"(2) PRIVATE PROPERTY.—As used in subsection (a), the term 'private property' means all property which is not owned by a department, agency, or instrumentality of (A) the United States or (B) the State of New York (or any public agency or authority thereof).

And make the necessary conforming changes in the table of contents.

Mr. LAFALCE (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. LaFALCE. Mr. Chairman, were it not for the emergency nationally and internationally known as Love Canal, I doubt that a Superfund would be in existence. Any yet because the Love Canal had to be dealt with prior to the passage of Superfund, certain inequities came about.

It is my pleasure to be able to say that it is my understanding that because of the leadership of Chairman Dingell, Mr. Eckart, Mr. Florio, Mr. Roe, Mr. Howard, Mr. Lent, Mr Snyder, et cetera, and especially the concurrence of Mr. Thomas, the Administrator of EPA, that consent might well be given to my amendment, which would give authorization to the EPA to make a grant for the acquisition of properties previously deemed ineligible not to exceed $2.5 million and also to provide for an arrangement with the State of New York for the maintenance of those properties and to give legislative mandate to the habitability and land use study that is taking place.

Mr. ECKART of Ohio. If the gentleman will yield to me, we have reviewed the gentleman's amendment, and I must compliment him for making a number of necessary adjustments.

I understand that this amendment has now been approved by Lee Thomas, of EPA, personally.

Mr. LaFALCE. At 7:53.

Mr. ECKART of Ohio. At 7:53. And I am pleased to say that I have reviewed it. With the cap and the necessary changes in it, we are pleased to accept the gentleman's amendment.

Mr. LaFALCE. I thank the gentleman for his assistance.

Mr. LENT. Mr. Chairman, will the gentleman yield?

Mr. LaFALCE. I yield to the gentleman from New York.

Mr. LENT. We have also had an opportunity to review this amendment. As I said to the gentleman from Erie County, he is to be commended for his perseverance on behalf of his constituents and the people of the State of New York. We have no opposition to this amendment.

Mr. LaFALCE. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. LaFalce].

The amendment was agreed to.

The CHAIRMAN. Are there further amendments to title II?

Mr. STENHOLM. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in support of the research, development, and demonstration provisions contained in the Superfund reauthorization bill. Specifically, I wish to speak on behalf of the demonstration-related aspects addressed in the substitute. In doing so, I want to extend my thanks to the members and staffs of the Committees on Energy and Commerce, Public Works, and Science and Technology—and particularly my colleagues Mr. Dingell, Mr. Wyden, Mr. Roe, and Mr. Torricelli—who have worked on the compromise provisions contained in this package. We have formed a reasonable compromise which I support, and which is a tremendous improvement over the existing Superfund Program.

In reauthorizing this crucial legislation, I know that all of us in Congress hope that an expanded Superfund Program will make the law more responsive and effective than it has been in the past. But, in expanding this program, we must do so in a way reflective of our acknowledgement that the problems associated with hazardous and toxic wastes will be with us for many decades to come. And that is why provisions to review, test, evaluate, and implement alternative and innovative cleanup technologies are so critical to the long-term effectiveness of the Superfund Program.

Proven releases of hazardous substances have occurred from uncontrolled sites throughout the Nation. People are increasingly worried about acute and chronic threats to their health and are beginning to demand permanently effective cleanups to minimize the likelihood of future hazards from existing sites.

To date, however, little progress has been made toward permanent cleanups. Moreover, detailed goals for permanent cleanups remain unclear, and without them it is difficult at best to evaluate or select cost-effective cleanup technologies.

EPA cleanup actions continue with an emphasis on the removal of wastes to land disposal facilities which themselves are becoming Superfund sites. The April "Groundwater Monitoring Survey" prepared by the Subcommittee on Oversight and Investigations of the Energy and Commerce Committee cited, and I quote, that "of the 56 Federal facilities subject to RCRA groundwater monitoring requirements, only 34 percent—19 facilities—are described as having adequate well systems." Such impermanent solutions result in sites getting worse, and repeated cleanup costs are thus inevitable. It is the intent of the demonstration language to make it both economically and technically possible to permanently clean up these currently uncontrolled waste dumps.

A failure at this junction to redefine the direction of Superfund away from its emphasis on containment technology and toward treatment technologies could result in a mere transfer of today's environmental crisis to future generations.

As chairman of the Subcommittee on Energy, Environment, and Safety issues affecting small business, I conducted a hearing in September to learn about the prospective availability of innovative cleanup technologies. I understood that the potential of finding such technologies is very real, and exists to a significant extent among the entrepreneurial individuals and firms within the small business community. These people and companies have shown that they can produce the technologies and innovations necessary for securing the desperately needed permanent solutions for true cleanups of the Nation's uncontrolled toxic waste sites. Since we created the Superfund in 1980, we have all too often seen ineffectiveness in the administration of the program. Too many cleanups have consisted of removing and redistributing wastes, rather than treating them full scale. We must step up the availability and use of more sophisticated methods for treating hazardous wastes under Superfund; we need to move away from the practice of removing and redistributing wastes, and instead begin to speed up the practice of testing and implementing technologies that will detoxify, destroy, or recycle hazardous substances.

For this reason, I introduced legislation to encourage the research, demonstration, and implementation of innovative technologies for the cleanup of hazardous substances under Superfund. Provisions from that bill which establish institutional capabilities for a long-term program for permanent remedial cleanups have been incorporated into the substitute before us today. The technology-oriented provisions of this bill will expand the range of permanently effective cleanup technologies, and will thus create a better environment for all developers of such technologies. Let me briefly provide an overview of the ways in which the innovative technology demonstration language contained in this legislation will improve the overall picture for finding permanent cleanup remedies.

The legislation establishes an Office of Technology Demonstration in EPA, which would function in coordination with both the Office of Solid Waste and Emergency Response and the Office of Research and Development.

The Demonstration Assistance Program components contained in this section of the bill provide for five key provisions, including the requirements that: EPA publish, at least once a year, a solicitation and evaluation of applications for demonstrations of innovative technologies; EPA select sites suitable for the testing and evaluation of innovative technologies; EPA develop detailed plans for conducting demonstration projects involving innovative technologies; EPA supervise demonstration projects, in which the Agency is to provide quality assurance for all data obtained from the projects; and that EPA evaluate the results of all demonstration projects, including a determination of the technologies' effectiveness and feasibility.

Within this program, any developer of an innovative technology can apply to EPA to conduct a demonstration project.

The legislation lays out strict yet flexible timetables for EPA to follow in conducting this demonstration program from start to finish. Under this system of timetables, developers are assured that their technologies will be reviewed, tested, and perhaps implemented within a reasonable amount of time for them to be able to make investment and marketing decisions relevant to the technology.

The program spells out that EPA institute at least 40 demonstration projects during the 5-year reauthorization cycle, unless the Administrator determines that insufficient applications have been submitted. Beginning in fiscal year 1987, EPA will be required to initiate at least 10 projects, and will be required to do so for each of fiscal years 1988 to 1990 as well.

Also, the program makes provisions for funding assistance for developers of technologies who are unable to obtain appropriate private financing sufficient to carry out the projects without Federal assistance. The amount of money available under the program is large enough so that developers with meritorious demonstration projects approved by EPA will be able to supplement private capital and conduct needed demonstration projects. But the money available under this program is restrictive enough to ensure that we will not open up the public trough to anyone seeking a Federal handout. Funding caps for both total Federal assistance as well as individual projects are included in the language.

Finally, the language requires EPA to submit a report to Congress citing the progress of the Demonstration Program created under the act. This provision will not only provide Congress with a yearly update of the status of the program, but will assist this body in gauging the progress of the overall scenario for permanent cleanup technologies.

Again, I strongly support the compromise research, development, and demonstration package worked out by my colleagues and myself. To this end, I urge all of my colleagues to support this section of the bill. The innovative technology language contained within the substitute ensures that when we reauthorized this program again in 5 years, we can do so with the knowledge that we have taken appropriate steps to find the methods that will provide for long-term solutions to this terrible toxic waste problem facing us.

The CHAIRMAN. The Clerk will designate title III.

The text of title III is as follows:

[NOTE.-Title III of H.R.3852 is previously reproduced and may be found at p.3837]

The CHAIRMAN. Are there amendments to title III?

AMENDMENT OFFERED BY MR EDGAR

Mr. EDGAR. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. EDGAR: Page 279, in line 19, insert the following before the period: "and chemicals (such as vinyl chloride, benzene, asbestos, and poly chlorinated biphenyls) which are known to cause or are suspected of causing cancer, birth defects, heritable genetic mutations, or other chronic health effects in humans".

(Mr. EDGAR asked and was given permission to revise and extend his remarks.)

Mr. EDGAR. Mr. Chairman, the hour is late, but I offer in title III of this bill an amendment which I believe is one of the more critical issues facing us over the course of the next 2 days in producing a strong Superfund bill.

I want to first commend my colleagues on both sides of the aisle and all of the committees of jurisdiction for coming forward in the House with a Superfund bill that I believe is effective and ought to be passed and ought to be sent to the Senate. We ought to find agreement between our body and the other body and move quickly to placing a strong effective Superfund bill on the President's desk.

Mr. Chairman, I am offering an amendment which would require firms handling hazardous substances to report routine releases of those substances which are not only acutely toxic, as provided for in the bill, but also those chemicals that pose serioius chronic health risks.

The bill before us calls on firms handling hazardous substances to provide emissions data for a presumably short list of extremely toxic, acutely hazardous chemicals. But across the country, thousands, if not millions of tons of toxic chemicals are released into the air, water, and ground each year which have a tragic long-term effect on the people who live nearby. Year after year, day after day, hour after hour, toxic releases pour into the environment, contaminating the air we breathe, the water we drink, and the ground on which our children play.

As drafted, the compromise version of H.R. 2817 prohibits the EPA from including chronic chemicals on the list of hazardous substances covered by the emissions data requirement. The exempted substances include: Asbestos, PCB's, benzene, vinyl chloride, toluene, dioxin, and others.

No emissions reporting would be required for these highly toxic chemicals under the current version of the bill. The Edgar-Sikorski amendment would include chronic chemicals because there is no reason to draw an arbitrary distinction between chemicals that have immediate health effects and those which can cause cancer, birth defects and other long-term health problems.

The people we represent have a right to know if they are being exposed to chemicals that could potentially kill them, regardless of whether they die suddenly or over a decade. In my opinion, the result is just as tragic no matter when it happens.

Many have expressed concern that this proposal might not be workable or that it might place an undue burden on the business community. I believe that those concerns are unfounded. The States of New Jersey and Maryland have had emissions data requirements for some time and have experienced little or no difficulty obtaining a high level of industry compliance.

I should also note that an emissions tracking system can be implemented without imposing expensive monitoring equipment costs on industry and small businesses. In the Maryland and New Jersey programs, if emissions information cannot be ascertained from monitoring equipment, engineering estimates may be submitted. A workable Federal program need not require additional monitoring equipment. In fact, a New Jersey Department of Environmental Protection investigation found that estimates were generally accurate.

Furthermore, even the Superfund bill passed by the other body includes an emissions data requirement that includes chronic, as well as acute, toxics. We must do at least as much in the House.

Last year we passed a tough Superfund bill that allowed us to return to our constituents and tell them that we had approved legislation to reduce the danger they faced from toxic wastes. Now, in the aftermath of Bhopal and Institute, WV, we have become much more aware of the fact that many Americans are exposed on a daily basis to hazardous substances that can cause cancer and other long-term health problems.

We would be doing less than our duty if we were to pass a relatively strong new emissions program and not include asbestos and PCB's. We hear that the substances are dangerous every day from the TV and radio. We read about PCB and asbestos removal from our schools and public buildings.

If these chemicals are so dangerous, shouldn't we monitor people's exposure to them?

If dioxin is dangerous enough to evacuate the entire town of Times Beach, wouldn't it be wise to find out how much people are exposed to on a regular basis?

If we are monitoring emissions of chemicals that can cause death or sickness in hours, why not do the same for those which may lead to injury over longer exposure periods?

Information about these health dangers is the basis of the right-to-know concept. It makes sense to apply right-to-know fully by including carcinogens and other chronic chemicals on the emissions list; I urge my colleagues to support the Edgar-Sikorski amendment.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. EDGAR. I yield to the gentleman from New Jersey.

Mr. FLORIO. To reinforce the point that you made with regard to no burden, Maryland has this, New Jersey, and maybe other States require this kind of information. The other body has included this language in their proposal, the Superfund proposal.

I do not know how anyone does not go along with the provision of providing for long-term tracking of exposure of things like PCB.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. EDGAR] has again expired.

(On request of Mr. FLORIO and by unanimous consent, Mr. EDGAR was allowed to proceed for 1 additional minute.)

Mr. FLORIO. If we are going to track long-term exposure, which is the purpose of this provision in the bill, why should we not be tracking long-term exposures for the chronic emissions that the gentleman is trying to track and target it on?

This is going to be perceived as a vote just to disregard the hazards associated with things like asbestos and toluene and benzene. This is a reasonable amendment, and I would support it.

Mr. EDGAR. I thank the gentleman for his comments.

I indicate to my colleagues we will ask for a recorded vote on this. We urge our colleagues to look carefully at the language of the amendment and support the amendment.

Mr. COATS. Mr. Chairman, will the gentleman yield?

Mr. EDGAR. I yield to the gentleman from Indiana.

Mr. COATS. I thank the gentleman for yielding.

I would just like to ask the gentleman a couple of questions. Can the gentleman give us an estimate of how many chronic subtances we are talking about adding to the requirement that status sheets be issued?

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. EDGAR] has again expired.

(By unanimous consent, Mr. EDGAR was allowed to proceed for 1 additional minute.)

Mr. EDGAR. On the national toxicology program list there are only 117 demonstrated carcinogens. Only 22 are firmly known. Ninety-five are suspected carcinogens.

Mr. COATS. If the gentleman will yield further, is the gentleman only seeking to add carcinogens to the list? The gentleman used the description "those substances posing chronic health hazards." We have some estimates that that may include up to 2,500 different substances. If that is the case, then we are talking about a significant amount of paperwork, effort, money that could be used in instances where we are cleaning up more toxic substances and actually detract from the program.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. EDGAR] has again expired.

(By unanimous consent, Mr. EDGAR was allowed to proceed for 1 additional minute.)

Mr. EDGAR. I would like to respond to the gentleman by saying that we in no way, under no circumstances, are we talking about 2,500 chemicals. We are talking about the same level of experience that Maryland has and New Jersey has, which include the chronic chemicals in their list today. And I draw the gentleman's attention to a Congressional Research Service document which I have before me, which looks at the specific number of chemicals that are used and determined by the Maryland experience and the New Jersey experience. It is the intention and the language of this amendment not to include that number of chemicals that the gentleman suggests.

My colleague's point assumes that this is a terribly burdensome program. In the Maryland State emissions program, which includes chronic chemicals, only 545 of the 550 survey forms sent out were returned, and the number of chemicals in each of those States were in the neighborhood of 500. That included both the chronic and the acute.

□ 2215

Mr. DINGELL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I think we better take a look at what this amendment which sounds so good in fact does. First of all, it does not just cover a few substances as its author said. It covers all substances which cause cancer. All those which are suspected of causing cancer. All those which cause birth defects. All those which are suspected of causing birth defects. All those which cause heritable genetic mutations or are suspected of causing heritable genetic mutations. Or other health effects in humans. That is a vastly larger list than was listed by the gentleman from Pennsylvania. It covers many more. The number which has been estimated to cover something on the order of 2,500.

To whom would this amendment apply? It would apply to any business. It would apply to gas stations; dry cleaners; manufacturing facilities; chemical plants; printers; plastic processors; it would apply to paint manufactureres; and it would apply to silk screeners. It would apply to any business which has 11 employees. Indeed, after this amendment went in place, they would need an additional 3 or 4 employees in 11-employee establishments. They would need something like 15 or 16 employees.

Now, this would even cover hairdressers, and it would not inconceivably cover restaurants and not inconceivably cover all manner of small business, including people who had copying machines or similar equipment on the premises. Now, if you want to outrage your constituents by imposing massive servitudes on them, then I urge you, endorse this with enthusiasm.

The monitoring required to file these reports would cost thousands of dollars. Remember, it would require reporting on air, on water, on groundwater, on injections into sewers, and on any other release which got into the environment, including spilling on the soils.

The cost of this ground water analysis, I am told, would run something on the order of $1,700 a year. Now, the argument is made we need this amendment because these facilities are releasing these dangerous substances in the air. We have section 112 in the

Clean Air Act. Section 112 deals with this problem, and affords authority to EPA to address the question of emissions into the air. Similar requirements are imposed in the Clean Water Act, and there are constraints on releases of substances of this kind under the Safe Drinking Water Act, under CERCLA, and RCRA.

Now, lest it be thought that the committees have not considered this matter in the writing of the basic legislation, my colleagues who in a surcease of enthusiasm would impose upon their constituents a massive servitude, should know that the proposal that is before you includes a requirement that disclosures of a character sufficient to inform people of any peril which stemmed from a hazardous release must be made available to the local authorities. And the communities are not barred under this legislation from imposing any additional amount of reporting and disclosure that they might feel met their local needs.

Now, in the enthusiasm of writing this, I would call to the attention of my colleagues that we are dealing here in large numbers of cases, not only with small businesses of limited capabilities to file the necessary reports, but you are dealing with good folk like volunteer fire departments and villages whose population and whose administrative services are extremely limited and greatly strained in providing the most ordinary and routine services, much less dealing with the masses of reports that would be generated as a result of this amendment.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DINGELL] has expired.

(By unanimous consent, Mr. DINGELL was allowed to proceed for 4 additional minutes.)

Mr. DINGELL. What you are going to do is to drown these unfortunate local communities in paperwork. The question which we must ask ourselves tonight as we consider this well-intentioned amendment is how much of a burden do we want to impose on the citizen, and how much clogging of the administrative mills do we want to occasion with information on a plethora of substances which cover everything that can cause any kind of health effect in human beings.

Mr. EDGAR. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman.

Mr. EDGAR. I thank the gentleman for yielding.

Mr. Chairman, I will make just four very quick points. The gentleman's information is wrong.

Mr. DINGELL. I have studied this matter in rather considerable detail and I will tell you I am right.

Mr. EDGAR. If the gentleman will yield, let me just point out four simple things: First, in the New Jersey experience, we are talking about 154 chemicals.

Mr. DINGELL. We are not talking about the New Jersey experience here.

Mr. EDGAR. If the gentleman would yield further, on the other three points I would like to make, I would just simply indicate that the same burdensome requirements that you are arguing are onerous on my amendment already exist in the bill that is before us because they include——

Mr. DINGELL. No; they do not.

Mr. EDGAR. They include in the legislation before us is an exemption for and a threshold for the small businesses and others that the gentleman is concerned about.

Mr. DINGELL. If the gentleman would permit, the list in the current legislation is very small. It relates only to substances which impose an immediate hazard on the population, as opposed to substances which present a suspected long-range danger. The gentleman is in error.

Mr. EDGAR. If the gentleman would yield further, the gentleman from Pennsylvania is not in error, that the same burdensome requirements that the industries have to respond to on acute substances are the very small requirements that we impose with EPA have a threshold requirement so that most small businesses would not be impacted as the gentleman has suggested.

Mr. DINGELL. I would observe to the gentleman that nowhere in his amendment is there a threshold requirement limiting——

Mr. EDGAR. It is already in the bill. If the gentleman would yield further, those threshold requirements are already in the legislation. It is not a matter of placing them in my amendment. The thresholds that already exist are now simply going to cover approximately 150 additional substances which may have chronic long-term impact in the same way.

Mr. DINGELL. The gentleman is totally in error. There is no way that the gentleman can tell us the precise number of substances that are involved, because I want to remind the gentleman the amendment includes all substances which are known to cause or are suspected of causing cancer, birth defects, heritable genetic mutations, and other chronic health effects. That can be anything from flaking skin to asthma to God knows what. It is not just those things which are known to cause those effects, but it is substances which are suspected of it.

Mr. EDGAR. If the gentleman would yield at that point, I have three sources here that I think the gentleman would agree are good.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DINGELL] has expired.

(On request of Mr. EDGAR and by unanimous consent, Mr. DINGELL was allowed to proceed for 2 additional minutes.)

Mr. DINGELL. I continue to yield to the gentleman.

Mr. EDGAR. I have three organizations, the National Toxicology Program list, the IRC list, and a list of additional chemical carcinogens that are provided.

Mr. DINGELL. I thank the gentleman and I am sure those lists are of immense help. But if the gentleman had cited those lists in his amendments, I would be very much impressed, and I would know what substances he was referring to. I must observe with vast distress that the list that the gentleman would impose upon the Nation is startlingly larger and covers anything which can cause anything from flat feet to falling hair and anything else.

Mr. EDGAR. If the gentleman would yield for one final point, if the gentleman in his language on the acutes does not include a specific number of chemicals because we have to leave that up to EPA. But it is the experience in Maryland and New Jersey that already has this provision as part of their law, that it is less than 150 and I thank the gentleman for yielding.

Mr. DINGELL. I am not aware of what Maryland or the other States have in their law. I am sure it is not the same, and I am equally sure that the list would be, if as set forth here, would be vastly larger.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman.

Mr. SNYDER. I want to thank the chairman for a very eloquent statement in regard to the broadness of this language. We all know that saccarin is accused or suspected of causing cancer. Why it has even been alleged that good bourbon whiskey causes a chronic health defect known as cirrosis of the liver or birth defects. Tobacco, which I happen to like, has been suspected of causing cancer.

There is no end to the broadness of this language as you have well explained.

Mr. DINGELL. As a matter of fact, absinth in a bar could be included.

Mr. SNYDER. Absolutely.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DINGELL] has again expired.

(On request of Mr. LENT and by unanimous consent, Mr. DINGELL was allowed to proceed for 2 additional minutes.)

Mr. DINGELL. I yield to the gentleman from New York [Mr. LENT].

Mr. LENT. I just wanted to reinforce the statement that the chairman of the Energy and Commerce Committee made earlier about overwhelming the emergency response authorities with a lot of useless data. I have here a letter from the International Association of Fire Chiefs which was sent to our committee at the time we were considering this legislation. They say they are concerned that certain legislative proposals may be counterproductive by going beyond what emergency response authorities need to address the dangers of hazardous substances in the community.

They go on to say "the legislation should cover which may present an imminent and substantial danger to public health. Inclusion of additional substances would exceed data that emergency authorities would need or could use to respond to a danger, and therefore, would be counterproductive."

So I think here we have from the organizations that we hope will respond in the case of an emergency, they do not want to be benefited by this plethora of useless information.

Mr. DINGELL. EPA has published a list of 403 toxic chemicals that pose risk in plant accidents. These are all items of known present and high danger. In the New York Times of November 18, 1985, a number of State officials including those from the State of Connecticut and a number of other States, said that they feel that this number is probably too high and probably will strain the ability of the administrative agencies of the several States to respond.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DINGELL] has again expired.

(On request of Mr. RITTER and by unanimous consent, Mr. DINGELL was allowed to proceed for 2 additional minutes.)

Mr. DINGELL. I yield to the gentleman from Pennsylvania [Mr. RITTER].

Mr. RITTER. I thank the gentleman.

I think the major thing wrong with this amendment is that it is a Clean Air Act amendment or Clean Air Act jurisdiction. We are dealing with the Superfund bill whose, I hope, main responsibility is to clean up hazardous waste dumps. Here we are talking about a hotly debated issue of section 112 of the Clean Air Act. The universe, given this language, is enormous. To show you how enormous it is, it would include your Thanksgiving dinner menu which was produced by the American Council of Science on Health.

□ 2225

And it has things like hydrazine in your cream of mushroom soup, and it has benzopyrene in your olives, and the list goes on and on. Roast turkey with gravy has methyl glyoxal.

I think the point made here is that the language that says, "released into the environment in any amount" simply does not have meaning for protection of public health because any amount of these substances may have negligible or meaningless effect or no effect whatsoever on human health and the environment.

Some of these substances are already regulated by OSHA in an enclosed place, in the workplace.

Mr. DINGELL. Under OSHA?

Mr. RITTER. Under OSHA.

Mr. DINGELL. Let me just concur in the gentleman's comments. The purpose of the bill as drawn is to enable response to emergencies. What this amendment will do will be clog the mill with monstrous amounts of data, or perhaps even information, which will be of such enormous scope and sweep and amount that the local units of government will not be able to deal with it.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DINGELL] has expired.

Mr. DINGELL. Mr. Chairman, I ask unanimous consent to proceed for 2 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

Mr. WAXMAN. Mr. Chairman, reserving the right to object, may I inquire whether we have a time limit under which we are operating, because some of us would like to speak, and if we have continuous renewal of time for people who are speaking, we will run out of time. May I inquire of the chairman of the committee?

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. WAXMAN. I yield to the gentleman from Michigan.

Mr. DINGELL. This is the last time. I will observe I am trying to help the gentleman.

Mr. WAXMAN. Well, I do not believe we are on the same side of the issue, and I would like to express my point of view.

Mr. DINGELL. That is why I am trying so hard.

Mr. WAXMAN. As long as we will have an opportunity to present the other side, I have no objection.

The CHAIRMAN. In response to the gentleman's question, and for the information of the Committee, there is 1 hour and 5 minutes, or 65 minutes of debate remaining on the 90-minute time limit on title III.

Mr. WAXMAN. On the whole title?

The CHAIRMAN. On the whole title.

Mr. WAXMAN. Not just this amendment?

The CHAIRMAN. No, sir.

Is there objection to the request of the gentleman from Michigan?

There was no objection.

The CHAIRMAN. The gentleman from Michigan [Mr. DINGELL] is recognized for 2 additional minutes.

Mr. DINGELL. Mr. Chairman, the EPA published a list of 403 toxic chemicals. This is what Charles J. Zieminski, an official of the Connecticut State Department of Environmental Protection, says about having such a large number of items on the list. The

November 18, 1985, New York Times article says this:

> State officials say they are concerned that the high number of chemicals on the list will overwhelm local resources in seeking out the most important risk.

Then Mr. Zieminski is quoted: "'We just don't think we can go to all 168 towns in Connecticut and provide help to each of them,' said Charles J. Zieminski, an official in the State's Department of Environmental Protection."

Now if you want to control these substances, let us not control them in a hastily drafted floor amendment. Let us deal with this issue as a part of a program which will control these substances in a thoughful, responsible way, because the consequences may be totally beyond what we know, both in terms of cost and irritation to public officials and to businessmen, and it may also so thoroughly clog the mills that when you get a real problem which requires an emergency response, the local response and emergency people will be so clogged with information and data that they will not be able to respond.

Mr. Chairman, I would for that reason urge that this matter be set aside to some later time when it can be dealt with more responsibly after we get better facts and better information so that we can have a better piece of legislation rather than an enthusiastic plethora of information that is simply going to drown the system.

Mr. SCHEUER. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

(Mr. SCHEUER asked and was given permission to revise and extend his remarks.)

The CHAIRMAN. The gentleman from New York [Mr. SCHEUER] is recognized for 5 minutes.

Mr. SCHEUER. Mr. Chairman, I will not use the 5 minutes. I know the hour is late, and we have heard a lot of argumentation on both sides of this issue.

Let me give the Members a real-world example of the kind of catastrophe this amendment could avoid if passed. Three years ago the Subcommittee on Natural Resources, Agricultural Research and Environment of the Science and Technology Committee, which I chair, held an investigation of the Dow Chemical Co. in Midland, MI, and the prospect that they were spewing inordinate amounts of dioxin on the land, in the air, and into the Tittabawassee River in Michigan on which they front.

The Dow Chemical Co. not only refused to give information on how much dioxin was continuously being released to the citizens of the town and the workers, but they refused to let the EPA come onto that land and measure the dioxin on the land and measure the dioxin which was being spewed into the Tittabawssee River on an hourly, daily, weekly, and monthly basis.

Now, the citizens of Midland, MI, had good reason to believe that dioxin was suspected of causing cancer, birth defects, and other serious health hazards. They knew from the nightly TV coverage that members of the Energy and Commerce Committee and other committees in Washington were providing, that dioxin was a serious health hazard. They were agonizing over their continuing exposure to dioxin.

☐ 1035

Veterans around the country were agonizing over their exposure to dioxin that they were subject to in their service in Vietnam.

But the residents of Midland, MI had no way of finding out whether the Dow Chemical Co. was exposing them to either airborne or waterborne dioxin emissions.

In the end, of course, the information did surface, and the coverup did not succeed. But it did cost Midland, MI, the citizens of that town, a great deal of time, money, pain and suffering.

Now, I think that we would all believe that the residents of Midland, MI were ill-served by government at the Federal, State and local level, and they suffered unnecessary trauma, unnecessary anxiety.

If you would not like to see your constituents abused and if you would not like to see your constituents denied essential knowledge that had devastating implications to their health and the health of their kids, the health of their unborn children, I hope you will pass this amendment.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. SCHEUER. Of course, I am delighted to yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, I

thank the gentleman for yielding.

Mr. Chairman, I think it is important to set in perspective what the right-to-know section of this bill is designed to do.

I heard reference made to section 112 of the Clean Air Act. That is not what we are talking about.

In part, the failure of the Clean Air Act is to deal with hazardous air pollutants, life-threatening contaminants, is what prompts this whole new initiative of the right to know.

Reference was also made to the emergency response capability function of this bill, a very important function of the bill. But it is not the exclusive function of the bill. One does not need an emergency response for a chronic contaminant; one needs it for an acute contaminant. But there is a very important function to be served by our long-term emission data records that we are going to keep to let the community know that we get information as to annual emissions of chronic as well as acute contaminants. And that is what the gentleman's amendment is going to do.

I would represent by virtue of coming from a State that has this system it has not resulted in great masses of paperwork, it has not resulted in oppression of small business people; it is something that is important and it is something that the other body has included in its version of this bill, and I would ask your support for it.

The CHAIRMAN. The time of the gentleman from New York [Mr. SCHEUER] has expired.

(At the request of Mr. WAXMAN, and by unanimous consent, Mr. SCHEUER was allowed to proceed for 2 additional minutes.)

Mr. SCHEUER. Mr. Chairman, you can refer to massive amounts of paperwork or you can refer to the distribution of essential information that citizens need to protect their health. I guess it is any man's calling.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. SCHEUER. I am happy to yield to the gentleman from California.

Mr. WAXMAN. Mr. Chairman, I thank the gentleman for yielding.

Let me see if I can put this whole issue in perspective.

We want to have a citizens' right to know what they are being exposed to that is harmful to them and the proposal that is before us says that we are going to have an inventory of harmful substances, but only those harmful substances that are considered extremely toxic, so that narrows the field very, very narrowly, so only certain toxics will be on an inventory and the public would then know they are being exposed to them.

Now, the gentleman from Delaware [Mr. CARPER] in a few minutes is going to try to expand that to include other acute substances. An acute substance is one that causes immediate danger to health.

Now, we have what are called chronic hazardous substances and those are substances that cause cancer, birth defects, leukemia, serious problems; but nevertheless, you do not see the impact of them immediately.

This amendment that is before us, the Edgar-Sikorski amendment, would say that if you are going to have an inventory and let the public know what they are being exposed to, they ought to know what chronic hazards they are being exposed to.

These are very dangerous chemicals, such as dioxin, PCB's, chloroform, formaldehyde, EDB. We would not even have information about those particular hazardous substances under this provision in the bill that is before us.

So this amendment is needed so that we really have a citizen's right to the information. Unless our citizens know they are being exposed to these dangers, they do not know they are likely to get cancer.

The CHAIRMAN. The time of the gentleman from New York [Mr. SCHEUER] has again expired.

(At the request of Mr. WAXMAN, and by unanimous consent, Mr. SCHEUER was allowed to proceed for 1 additional minute.)

Mr. WAXMAN. Mr. Chairman, will the gentleman yield further?

Mr. SCHEUER. Yes, I yield to the gentleman.

Mr. WAXMAN. The theory of all this, Mr. Chairman, and when they know the theory, they are going to say to the Government, "We now know we are being exposed to these hazards. We want you to regulate so that we are protected."

Now, really, let us understand what is going on. We are not even regulated. We are only going to get an inventory so that people will know what hazards they are being exposed to.

We hear reference to section 112 of the Clean Air Act. That is the section that protects the public from hazardous pollutants in the air. Out of the hundreds and maybe thousands of chemicals, do you know how many the EPA has regulated in 15 years? Six. Are we going to say that is protection for the public?

We are not even asking for regulation in this amendment, only that the inventory be complete to reflect these chronic hazards that cause cancer, birth defects, and leukemia. It is a responsible amendment and I would urge its adoption.

Mr. CHAIRMAN. The time of the gentleman from New York [Mr. SCHEUER] has again expired.

(At the request of Mr. RITTER, and by unanimous consent, Mr. SCHEUER was allowed to proceed for 1 additional minute.)

Mr. RITTER. Mr. Chairman, will the gentleman yield for a question?

Mr. SCHEUER. Yes, I yield to the gentleman from Pennsylvania.

Mr. RITTER. Mr. Chairman, in the language on page 279, line 18 it says, "in any amount."

Before we inventory these substances, do we have any idea whether it is 1 part per trillion that is going to be inventoried that will be an emission, or 1 part per billion, or 1 part per million, or how would that be defined?

Mr. SCHEUER. Some of these toxic substances are incredibly lethal in infinitesimal amounts and our ability to measure now does go up into a small number of parts per trillion.

I can suggest to the gentleman that one drop of dioxin in an Olympic-sized swimming pool makes it lethal for living things.

Mr. SIKORSKI. Mr. Chairman, will the gentleman yield?

Mr. SCHEUER. I yield to the gentleman from Minnesota.

Mr. SIKORSKI. Mr. Chairman, I thank the gentleman for yielding.

In response to the question of the gentleman from Pennsylvania and the other talk that we have heard tonight, first of all the threshold discretion by the EPA Administrator clearly takes care of any kind of concern with regard to amount.

Second, the overall discretion that the bill has written on acute chemicals, and it would apply to chronic chemicals, more than takes care of any kind of burdensome numbers or amounts or particular individuals or companies that would be affected.

It clearly is within the discretion of the Administrator.

The parade of horribles that is being described to us with regard to chronic is already in the bill with regard to acute chemicals.

Mr. RITTER. Mr. Chairman, will the gentleman yield further on that point?

Mr. SCHEUER. Yes, I yield to the gentleman.

Mr. RITTER. Mr. Chairman, there really is a difference between acute and chronic.

Now, I know this is all a response to the Bhopal disaster and, yes, methyl isocyanate will be one of the acutes; but the fact remains there has never been a drop of dioxin. It is a trace element occurring in parts per million or parts per billion.

As a matter of fact, while dioxin is very toxic to animals, the linkage between dioxin and human health is not as solid as the linkage between dioxin and certain animal impact; but if—if it is deemed, if a substance is deemed acutely toxic and has the impact on immediate degradation of human health, it will be covered by what we are doing here.

We are trying to respond to those substances which are acutely toxic, but the universe covered by those substances suspected of causing cancer or suspected of causing birth defects, goes way beyond the acute.

The CHAIRMAN. The time of the gentleman from New York [Mr. SCHEUER] has again expired.

(At the request of Mr. FLORIO, and by unanimous consent, Mr. SCHEUER was allowed to proceed for 1 additional minute.)

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. SCHEUER. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, I thank the gentleman for yielding.

Just to respond to the gentleman from Pennsylvania, the void that is not filled in this scenario is that unless we have this amendment, we can have annual emissions out of a smokestack, out of a facility involving vinyl chloride, PCB, dioxin, asbestos, and no one is required to report that that information is available to the people in the town that it is being injected into their air; so the gentleman's observations about acute reporting are correct.

The deficiency is that chronic contaminants that are equally as dangerous, only not as quickly perceptible as being dangerous, are not going to be reported under the bill as it is contained now.

Under the gentleman's amendment, it will make the change.

I thank the gentleman for yielding.

Mr. SIKORSKI. Mr. Chairman, I move to strike the requisite number of words.

(Mr. SIKORSKI asked and was given permission to revise and extend his remarks.)

Mr. SIKORSKI. Mr. Chairman, the focus of some of the discussion has been on emergency planning. Let me call your attention to the fact that Title III which is being amended at this stage is called Emergency Planning and Community Right to Know. Community right to know means just that. It makes sense.

We are but one short year from Bhopal, India. A leaky storage tank, an early morning emergency, as one journalist put it, a pall of white smoke that spread with the wind, poisoning human beings as if they were insects. Over 2,000 people died, over 200,000 people were maimed or injured. Bhopal was in India, but it was an American company operating in a replica of an American plant.

In America today, 60,000 chemicals are produced in over 6,000 communities and last year alone we had 5,700 toxic chemical accidents.

We know that the vast majority of dangerous exposure to hazardous chemicals is through long-term, routine or regular releases, not the dramatic Bhopal kinds of incidents. The effect of exposure to these chemicals is not discernible overnight. The corpses are not in the streets. The corpses are waiting in American hospitals, not on Indian streets, American hospices. They come from American playgrounds. They come from American blue-collar factories. They come from American nursing homes.

We are talking about chemicals that are silent killers, slowly wielding their lethal axe over years and years of exposure.

The millions of Americans in thousands of neighborhoods, your neighborhoods, exposed to toxic chemicals, your constituents and your neighborhoods, have a fundamental right to know about the hazardous chemicals, acute and chronic, that are released into the environment hour after hour, day after day, year after year. They have a right to know where the strange odors are coming from. They have a right to know what toxic chemicals are mixed in the soil their kids play on and they have a right to know what poisonous chemicals are contaminating their drinking water.

Now, despite a section 112 in the Clean Air Act that the EPA says does not even apply to methyl isocyanate, the chemical in Bhopal, despite two decades of environmental regulation of toxic substances, despite thousands of files of accumulated data about them, despite thousands of cases of brain cancer, liver cancer, lung cancer, blood cancer, asbestos and birth defects, despite all this, we still cannot answer basic questions about even the most common and deadly toxic chemicals.

First, which chemicals are being produced and in what quantities? How much is being shipped off as commercial product and how much is being lost in the manufacturing or transportation process? How much is spilled or released into our waters, our air and our land?

Good questions. Your constituents probably have a personal initmate interest in the answer to those questions.

Yet this bill, H.R. 2817, as drafted, actually prohibits the Environmental Protection Agency from answering those questions for your constituents. As drafted, it prohibits inclusion of these chemicals which pose a chronic health hazard to human health on this list of substances covered by the emissions data requirements. While providing information on emission of a few acute chemical hazards, chronic chemicals would be exempted from coverage.

Would they be a few creams, a few solutions that are ridiculous? Of course not.

Asbestos, a suspected carcinogen, no, it has not been proven beyond a reasonable doubt that it is a carcinogen, but a suspected carcinogen for 25 years.

□ 2250

Toluene, another suspected carcinogen.

Dioxin. Tell the people in Times Beach that they do not have any problem with dioxin.

PCB's, a suspected carcinogen, not a proven carcinogen.

Benzene, linked to leukemia.

There is simply no reason to draw an arbitrary distinction between what some people call acute, other people call chronic chemicals, when these cause cancer, birth defects, and other long-term problems. It is like outlawing hand grenades because they are dangerous, but saying that activated time bombs are okay.

For this reason, the gentleman from Pennsylvania [Mr. EDGAR] and I are offering an amendment which will expand the list of covered chemicals to include chronic chemicals, the activated time bomb, as well as the grenades.

The question comes down to this: You do not need speculation and a bunch of parades of horribles. The question becomes, if you believe your constituents in the communities in your area have a right to know of cancer-causing chemical releases, vote "yes." If you do not think they have the right to know, go ahead and vote "no."

If you think they have the right to know about mutation and birth-defect causing chemicals, vote "yes." If you think they should not, vote "no."

If you think they have the right to know about kidneys, liver or respiratory disease chemicals and the release in their communities, vote "yes." If you think they should not have the right, vote "no."

Mr. RITTER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, according to the gentleman from Minnesota, we should ban Thanksgiving dinner because the exposure—and that is really the bottom line—the exposure of people to hazardous substances and toxic chemicals depends upon how much they are exposed to. The fact remains that the substances the gentleman is talking about, when it comes to the need to regulate some of these substances in the workplace, they are regulated.

But the question then becomes: What are the amounts that are being emitted and what does the data mean? What is the gathering of all this data, whether it is a part per billion or a part per trillion? What does it all mean? What does it mean when the amounts of similar chemicals in our daily diet exceed by 4 orders of magnitude the exposure that these people face?

Ladies and gentlemen, the gentleman from Minnesota has given you the bad news. The good news is, life expectancy has never been higher. Age-adjusted cancer rates are flat. The basic reason for this is that we do not know more than we know by orders of magnitude about what causes cancer. This society, according to the gentleman from Minnesota, is drowning in a sea of chemical carcinogens.

That is absolutely ridiculous and the statements from the gentleman from Minnesota, designed to scare the wits out of our constituents and out of some of the Members, are patently unscientific, antimedical, defy the best studies that the cancer and health community and the scientific community have been coming up with.

Frankly, the amendment adds a burden to a bill which is a workable doable Superfund hazardous waste site cleanup bill that is not only enormous but frivolous and irrelevant.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield to me?

Mr. RITTER. I yield to the gentleman from California.

Mr. WAXMAN. I thank the gentleman for yielding.

Mr. Chairman, EPA says there are some 2,000 people dying annually from chronic exposure to dangerous chemicals in the air.

As to this question of what limit, what minute amounts are going to have to be reported, I would refer the gentleman to the bill that is before us. It says:

> Threshold for Reporting:
>
> At the time a substance is listed under this subsection, the Adminstrator shall also establish a 12-month cumulative threshold amount for each substance for purposes of the reporting requirements of this subsection.

So, obviously, EPA is not going to have frivolous reporting to them.

Mr. RITTER. If I may reclaim my time just on the point the gentleman made, the 2,000 deaths that EPA is talking about from air pollution exposure is due not to emissions from these corporate point sources but is due largely to combustion emission, it is due to the general automobile combustion, fireplace emissions, and that is the background level of air pollution which, in terms of orders of magnitude, is far, far more serious than the kinds of emissions and exposures. Again, the key is exposure. It is not what comes off. It is what the people are exposed to.

Mr. WAXMAN. If the gentleman will yield further to me, the EPA has said it is both large and small sources of these pollutants that cause cancer. We do not know. That is why we ought to have an inventory of these chronic chemicals in the air, and other sources, so that we can know what we are being exposed to.

Mr. RITTER. Mr. Chairman, if I may reclaim my time just on that point, if the gentleman, as he says, does not know about the EPA number and where it comes from, then the gentleman should not blame it on the air emissions that are currently under discussion on this amendment.

Mr. WAXMAN. If the gentleman will yield to me further, the EPA says in their 6-month study that some 2,000 people die annually from chronic exposure to dangerous chemicals in the air, and the gentleman is submitting that he thinks that is from automobiles.

I am telling the gentleman it is from all sources, including these chemical plants.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. RITTER] has expired.

Before the gentleman requests additional time, the Chair will advise the Committee that under title III there has been a unanimous consent agreement to limit debate on title III to 90 minutes. As of this time, there are 41 of those minutes remaining for all other amendments that will be offered to title III. So the Chair would advise the Members to keep that in mind as we continue to consider this amendment and future amendments.

Mr. RITTER. I thank the Chair for his words of advice and I will heed them.

(By unanimous consent, Mr. RITTER was allowed to proceed for 1 additional minute.)

Mr. RITTER. Mr. Chairman, I would like to point out that the air pollution figures that EPA is coming up with, first of all, pale in comparison with what we do to ourselves by polluting the air by smoking, but by and large, we had hearings on this, the large percentage by far are a very wide variety of area pollution sources, not these particular sources which are at stake here.

So the data is very, very thin to support the hysterical hypothesis of the gentleman from Minnesota.

Mr. CARPER. Mr. Chairman, I rise in support of the amendment.

I rise to commend Mr. EDGAR and Mr. SIKORSKI for rectifying an oversight in the bill's language on extremely toxic substances. I'm not sure we claim to address the very real right of our citizens to know what hazardous substances are being released into their envirommment and yet ignore those substances which are carcinogenic or pose other long-term health threats. This bill, as written, apparently does just that.

Though this amendment is simple, it is, nonetheless, vital to the protection of our citizens who live in the vicinity of chemical facilities. The most remarkable revelation I have had since I began to work on the community-right-to-know issue is that many citizens have no idea what chemical risks they face in their communities. Moreover, EPA, State and local authorities have no coordinated mechanism for identifying this risk. As a result, we cannot even say with certainty how much hazardous material is being discharged into our environment from a particular facility, much less nationwide.

This bill takes a significant step in recognizing that there is a need to get a handle on the emission of acutely hazardous materials. Unfortunately, those are not the only substances which require our attention. This point is hammered home every day in our communities.

For years, the citizens of Delaware City, DE, were unaware that a company on the outskirts of their town was discharging tons of the powerful carcinogen, vinyl chloride, into their atmosphere. Indeed, over 41 tons of this extremely hazardous material were discharged between 1981 and 1984. Unfortunately, we may not know the effect of this chronic discharge on the local citizens for years, or even decades. The EPA has determined that this substance is extremely hazardous to human health, and yet this substance would be exempted from coverage under this bill. Also exempted by the bill are benzene, asbestos and PCB's.

Though acutely toxic substances such as MIC, which wiped out over 2,000 people and injured more than 200,000 in Bhopal, India, have the ability to get considerable—and deserved—attention, the insidious and subtle nature of carcinogens in our environment calls out for equal, if not greater, attention from citizens and public health officials. For this reason, I strongly support this amendment, and urge my colleagues to do likewise.

The CHAIRMAN. The question is on

the amendment offered by the gentleman from Pennsylvania [Mr. EDGAR].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. EDGAR. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 183, noes 166, not voting 85, as follows:

[Roll No. 434]

AYES—183

Ackerman
Anderson
Anthony
Applegate
Atkins
AuCoin
Barnard
Barnes
Bates
Bedell
Beilenson
Bennett
Berman
Boehlert
Boland
Bonior (MI)
Bonker
Borski
Bosco
Boucher
Boxer
Bruce
Bryant
Burton (CA)
Bustamante
Carper
Clay
Clinger
Collins
Conyers
Coughlin
Coyne
Darden
Daschle
Dellums
Derrick
DioGuardi
Donnelly
Dorgan (ND)
Downey
Durbin
Dwyer
Dyson
Early
Eckart (OH)
Edgar
Edwards (CA)
Erdreich
Evans (IL)
Fascell
Fawell
Fazio
Feighan
Fish
Florio
Foglietta
Foley
Ford (TN)
Fowler
Frank
Gaydos
Gejdenson
Gilman
Glickman
Goodling
Gordon
Gray (IL)
Green
Gregg
Guarini
Hamilton
Hayes
Hertel
Howard
Hoyer
Huckaby
Hughes
Jacobs
Jeffords
Jenkins
Jones (OK)
Kanjorski
Kaptur
Kastenmeier
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
Lantos
Leach (IA)
Lehman (FL)
Leland
Levin (MI)
Lipinski
Lowry (WA)
MacKay
Manton
Markey
Matsui
Mavroules
McCloskey
McCurdy
McGrath
McHugh
Mikulski
Miller (CA)
Miller (WA)
Mineta
Moakley
Molinari
Moody
Mrazek
Murphy
Nowak
Oakar
Oberstar
Obey
Panetta
Pease
Penny
Petri
Rangel
Reid
Richardson
Ridge
Rinaldo
Rodino
Roe

Roemer
Rose
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Savage
Saxton
Scheuer
Schroeder
Schumer
Seiberling
Sensenbrenner
Sharp
Sikorski
Smith (FL)
Smith (IA)
Smith (NJ)
Smith, Robert (NH)
Snowe
Solarz
Spence
Spratt
Staggers
Stallings
Stark
Stokes
Studds
Tallon
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Vento
Visclosky
Volkmer
Walgren
Waxman
Weaver
Weber
Weiss
Wheat
Whitley
Wilson
Wirth
Wise
Wolf
Wolpe
Wyden
Yatron

NOES—166

Akaka
Andrews
Armey
Badham
Bartlett
Barton
Bateman
Bentley
Bereuter
Bevill
Bilirakis
Bliley
Boulter
Breaux
Brooks
Brown (CO)
Broyhill
Burton (IN)
Byron
Callahan
Carney
Carr
Chandler
Chapman
Chappell
Chappie
Coats
Cobey
Coble
Coelho
Coleman (TX)
Combest
Cooper
Courter
Craig
Crane
Daniel
Dannemeyer
Daub
Davis
de la Garza
DeLay
DeWine
Dingell
Dornan (CA)
Dowdy
Dreier
Dymally
Eckert (NY)
Edwards (OK)
Emerson
English
Evans (IA)
Fiedler
Fields
Flippo
Franklin
Frenzel
Fuqua
Gallo
Gekas
Gingrich
Grotberg
Hall, Ralph
Hammerschmidt
Hansen
Hatcher
Hefner
Hendon
Henry
Hiler
Hubbard
Hunter
Hutto
Hyde
Ireland
Johnson
Jones (NC)
Jones (TN)
Kasich
Kindness
Kolbe
Kramer
Lagomarsino
Latta
Leath (TX)
Lehman (CA)
Lent
Lewis (FL)
Lightfoot
Livingston
Lloyd
Luken
Lundine
Lungren
Mack
Madigan
Marlenee
Martin (IL)
Martin (NY)
Mazzoli
McCain
McCandless
McCollum
McEwen
McKernan
McMillan
Michel
Mollohan
Monson
Moore
Morrison (WA)
Myers
Natcher
Nielson
Oxley
Packard
Parris
Pashayan
Perkins
Quillen
Rahall
Ray
Regula
Ritter
Roberts
Robinson
Rogers
Rostenkowski
Rudd
Schaefer
Schuette
Shelby
Shumway
Siljander
Skeen
Skelton
Slattery
Slaughter
Smith (NE)
Snyder
St Germain
Stangeland
Stenholm
Strang
Stratton
Stump
Sundquist
Sweeney
Swift
Synar
Tauke
Tauzin
Taylor
Thomas (CA)
Valentine
Vucanovich
Walker
Watkins
Whittaker
Wortley
Wright
Young (AK)
Young (FL)
Young (MO)
Zschau

NOT VOTING—85

Addabbo
Alexander
Annunzio
Archer
Aspin
Biaggi
Boggs
Boner (TN)
Broomfield
Brown (CA)
Campbell
Cheney
Coleman (MO)
Conte
Crockett
Dickinson
Dicks
Dixon
Duncan
Ford (MI)
Frost
Garcia
Gephardt
Gibbons
Gonzalez
Gradison
Gray (PA)
Gunderson
Hall (OH)
Hartnett
Hawkins
Heftel
Hillis
Holt
Hopkins
Horton
Kemp
LaFalce
Levine (CA)
Lewis (CA)
Loeffler
Long
Lott
Lowery (CA)
Lujan
Martinez
McDade
McKinney
Meyers
Mica
Miller (OH)
Mitchell
Montgomery
Moorhead
Morrison (CT)
Murtha
Neal
Nelson
Nichols
O'Brien

Olin
Ortiz
Owens
Pepper
Pickle
Porter
Price
Pursell
Roth
Schneider
Schulze
Shaw
Shuster
Sisisky
Smith, Denny (OR)
Smith, Robert (OR)
Solomon
Swindall
Udall
Vander Jagt
Whitehurst
Whitten
Williams
Wylie
Yates

☐ 2315

Mr. JONES of Tennessee and Mr. DYMALLY changed their votes from "aye" to "no."

Messrs. HERTEL of Michigan, LEHMAN of Florida, WILSON, GREEN, and SAXTON changed their votes from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Mr. HOWARD. Mr. Chairman, I ask unanimous consent that when the Committee resumes debate on the bill on tomorrow, all debate on any amendment offered by the gentleman from Massachusetts [Mr. Frank], which establishes a new title VI to the bill, and all amendments thereto, be limited to 50 minutes divided equally between the gentleman from Massachusetts [Mr. Frank] and an opponent to the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

Mr. FLORIO. Reserving the right to object, Mr. Chairman, I did not see the gentleman from Massachusetts.

Mr. FRANK. Mr. Chairman, if the gentleman will yield, that is perfectly acceptable to me.

Mr. FLORIO. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. HOWARD. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. Gray of Illinois] having assumed the chair, Mr. Hoyer, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2817) to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes, had come to no resolution thereon.

[From the Congressional Record, Dec. 6, 1985, pp. H11227-H11280]

SUPERFUND AMENDMENTS OF 1985

The SPEAKER. Pursuant to House Resolution 331 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 2817.

□ 1040

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 2817) to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes, with Mr. HOYER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Thursday, December 5, 1985, title III of the text of H.R. 3852, which is considered as an original bill for the purpose of amendment, was open for amendment at any point. Debate on title III had been limited to 90 minutes. There are 40 minutes of debate remaining on title III. Debate on title IV had been limited to 30 minutes. Debate on an amendment by the gentleman from Massachusetts [Mr. FRANK] to add a new title VI and all amendments thereto, had been limited to 80 minutes to be equally divided and controlled by the gentleman from Massachusetts [Mr. FRANK] and a Member opposed thereto.

Are there any further amendments to title III?

AMENDMENT OFFERED BY MR. RICHARDSON

Mr. RICHARDSON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment Offered by Mr. RICHARDSON: Page 301, after line 2, insert:

(C) The term "hazardous substance emergency" also includes any release of a hazardous substance in amounts which require notification of the Environmental Protection Agency under CERCLA and which constitute a substantial threat to the public health and environment. The Administrator of the Environmental Protection Agency shall promulgate regulations to carry out this subparagraph.

Mr. RICHARDSON. Mr. Chairman, my amendment, I believe, has been worked out with both the majority and the minority. I am offering this amendment today to ensure that local officials receive at least the same information about the release of hazardous substances into the environment as does the Federal Government.

Under current law, Superfund requires firms that release certain threshold quantities of hazardous substances to immediately notify the National Response Center in Washington. The point at which they must notify the response center is when a "reportable quantity" has been released. By definition, a reportable quantity is a release which constitutes a substantial danger to the public health or welfare or the environment.

While the plant manager must notify Washington in the event of a reportable quantities release, they may or may not notify local officials—emergency response committees, emergency personnel—depending on whether they decide the release was abnormal or accidental.

My amendment would simply add the requirement that the releases which require reporting to Washington—reportable quantities which EPA has determined constitute a danger to the community—also be reported to local officials. The amendment would simply add to the list of situations in which a plant manager must notify the public—it in no way diminishes the other standards for notification.

EPA is currently in the process of determining reportable quantity thresholds for the 689 chemicals on the hazardous substances list. EPA is required to have all of these reportable quantity levels established before the emergency response provisions of the bill go into effect.

Mr. Chairman, I can think of no more appropriate situation to notify local officials and emergency response personnel than in the event of a release of a hazardous substance which presents a substantial danger to the public health—this is what community right to know is all about. I think this is an important amendment and urge my colleagues to support it.

Mr. ROE. Mr. Chairman, would the gentleman yield?

Mr. RICHARDSON. I yield to the gentleman from New Jersey.

Mr. ROE. Mr. Chairman, the amendment has been reviewed. It is an improvement of the bill. We have no objection on this side.

Mr. LENT. Mr. Chairman, will the gentleman yield?

Mr. RICHARDSON. I yield to the gentleman from New York.

Mr. LENT. I thank the gentleman for yielding.

I just want to confirm that this is the amendment that provides for regulations for emergencies.

Mr. RICHARDSON. The gentleman is correct. Notification of local officials at the same time that the Washington Response Center is notified.

Mr. LENT. Mr. Chairman, we have gone over the amendment. It is a good amendment. We have no objection.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Mexico [Mr. RICHARDSON].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. CARPER

Mr. CARPER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CARPER: Page 281, strike out lines 3 and 4 and lines 11 and 12 and redesignate the following subparagraphs as (A) and (B).

Page 281, in line 5, strike out "group of facilities" and in lines 13 and 14, strike out "group of covered facilities".

Mr. CARPER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Delaware?

There was no objection.

Mr. CARPER. Mr. Chairman, I do not intend to ask for a vote on this particular amendment. What I would like to do is to enter into a colloquy with the gentleman from New Jersey, [Mr. ROE].

As I understand, under section 311(e), the Administrator is given discretion to provide exemptions for the filing of material safety data sheets and hazardous substance reports. The standard for providing such exemptions is that there is not "a reasonable likelihood of injury to human health or the environment."

This is a high standard to meet and would, I believe, have to be granted based on the particular conditions present at a particular facility. Is it your understanding that for both the MSDS and hazardous substance inventory reports, EPA would be able to judge whether the standard for exemption is met only as regards a particular facility?

Mr. ROE. Yes. It is my understanding that under this section, EPA would have to look at the conditions found at a specific facility in order to determine whether a waiver would be appropriate. Procedurally, however, EPA might consolidate petitions by a single owner or operator for several facilities. Nevertheless, EPA must still determine whether exemptions are appropriate for each facility as part of that proceeding.

Additionally, since EPA determines the list of hazardous substances which would be required to be reported on, it is our intention that EPA could not then provide a blanket exemption limiting the need to file such reports for specific substances across the board. Nor do we intend that entire classes of industries be provided with across-the-board waivers but rather that EPA would judge the appropriateness of waivers on an individual facility basis.

The MSDS's and hazardous substance reports provide valuable information to State and local health officials, firefighting and emergency response officials, and communities. Therefore, it is our intention that EPA use the waiver authority carefully and provide exemptions for such reports only when warranted by specific conditions.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. CARPER. I would be happy to yield to the gentleman from Kentucky.

Mr. SNYDER. I would like to add that I generally concur with respect to the exemption for reporting requirements applicable to hazardous chemicals under section 311(e)(1). The provisions of subparagraph 2 thereof which deal with a more limited class of substances allow EPA authority to provide an exemption for a covered hazardous substance in a somewhat broader fashion. However, the provision would allow an exemption to be granted for reporting on the basis of classes or categories of covered hazardous substances or limit reporting on the same basis. We expect that EPA will carefully consider requests for exemptions recognizing the important use of these reports. I would like to ask if the two gentlemen agree.

Mr. CARPER. I yield to the gentleman from New Jersey.

Mr. ROE. The intent, that is my understanding of what we are trying to do, is clarify in this colloquy exactly what we mean, and we are coming back and saying to EPA, "You have to look at this more on a facility basis and not just blanket waivers." So I think what the gentleman is suggesting is in the spirit.

Mr. CARPER. That is my understanding.

Mr. CARPER. Mr. Chairman, I concur with the comments of the gentleman from New Jersey.

With that, Mr. Chairman, I would ask unanimous consent that I be permitted to withdraw my amendment at this time.

The CHAIRMAN. Is there objection to the request of the gentleman from Delaware?

There was no objection.

AMENDMENT OFFERED BY MR. CARPER

Mr. CARPER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CARPER: Page 279, after line 19, insert: "If the Administrator fails to publish such list within such 18 month period, the list shall consist of the Acute Hazards List developed by the Administrator as part of its Federal Initiative for Responding to Accidental Releases of Air Toxics (described in the July 26, 1985, notice from the Office of Solid Waste and Emergency Response of the Environmental Protection Agency) until such list is published.".

Page 279, line 9, delete "12" and insert "18".

Mr. CARPER. Mr. Chairman, I would like to take the next couple of minutes to explain to my colleagues my concerns in this regard. The amendment I propose is simple, straightforward, and strengthens the bill's provisions on the listing of extremely toxic substances.

The bill before us requires the EPA Administrator to publish a list of extremely toxic substances which are so acutely toxic that their release into the environment may present an imminent and substantial endangerment to human health. Only facilities which handle a significant amount of these substances would be required to report annually the amount of those substances released to the environment.

My amendment would require that the Administrator publish the list of extremely toxic substances within 12 months of enactment of this legislation. If the Administrator should fail to develop a list during that period of time, an acute hazardous list which the EPA has already developed as part of its reaction to the Bhopal incident would apply. This list contains 403 chemicals which pose potentially serious health dangers to the public. Although I think this list reflects the same goals and criteria set forth in this bill, and would serve as an excellent basis for developing the list required by this section, there is a widely held belief that the EPA should be given an opportunity to develop another list in response to this bill's mandate. For that reason, this amendment does not require the Administrator to use this list, but it does say that the existing list will govern if the Administrator is unable to publish a new list within 1 year of enactment.

There is nothing in my amendment which would compromise the Administrator's authority to revise the list periodically—he could add or delete substances as he sees fit.

This amendment would not require that facilities automatically report on these 403 substances—if indeed the list ever comes into play. The EPA will establish an annual threshold amount for substances on the list. Only those facilities which handle more than these threshold amounts will need to report.

The reporting itself is anything but burdensome—requiring only reasonable estimates of the total amount of each extremely toxic substance released into the environment during the preceding 12-month period.

It is a reasonable amendment which acknowledges the considerable effort the EPA has already expended to address the very issue before us today. I urge adoption of the amendment.

☐ 1050

I might also add that initially my thought was to simply say rather than giving EPA 18 months of time to develop this list of extremely toxic materials, since they have already spent the last 12 months developing a list of acutely toxic materials, let us designate that as a body, let us designate that list of 403 toxic materials as the list of extremely toxic materials.

I have been trying to work out a compromise with our friends on both sides of the aisle, to give EPA some latitude, and that latitude goes something like this: Let us give them 18 months to develop their own list. EPA's track record does not inspire confidence in ther ability to meet deadlines. If after 18 months they have not met the deadline and generated the list of extremely toxic materials, after 18 months then this list that they have already generated of 400 acutely toxic materials becomes the list.

However, if somewhere down the line the EPA finally develops their list of extremely toxic materials, that would prevail. It is the "king of the mountain" scenario, almost, revisited. As a result, I think I have made every effort to address some of the concerns raised by my friends on both sides of the aisle to meet some concerns raised by EPA, and I would ask for consideration and, hopefully, the adoption of this amendment.

Mr. COATS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I think the intent of the gentleman is admirable and quite clear, although I do have a problem with the acute hazards list, because my understanding is that EPA developed this on kind of a broad-brush stroke, and it includes some items which may or may not fall under the requirements of being extremely toxic. In fact, we have some information that vitamin D and vitamin K is on the list, and I am not so sure that that is the ultimate list that we want to get down to. Nevertheless, I think that the intent of the gentleman's amendment is probably a good one.

My concern is that with the adoption last evening of the Edgar amendment, we are now throwing this whole thing into a great deal of confusion, because if we are going to add to the extremely toxic substance list all those items that we discussed last night or that might be brought in with the adoption of the Edgar amendment, I am concerned that the EPA is not going to be able to publish this new list within 18 months and, therefore, under the gentleman's amendment would be required to publish the acute hazards list or release the acute hazards list, so communities will be operating under one list for a certain period of time and then EPA will contact them at some point later and say, "scratch that list, there is going to be a new list, we have to implement a whole new series of hazardous chemicals that you need to be concerned with," and it is going to add a lot of confusion.

Mr. CARPER. Mr. Chairman, will the gentleman yield?

Mr. COATS. I yield to the gentleman from Delaware.

Mr. CARPER. I appreciate the comments of the gentleman.

Originally when I had drawn my amendment, I had given EPA a period of 12 months. They had indicated that that was not sufficient time. We have redrawn the amendment, following a conversation last evening, to provide for a year and a half.

Mr. COATS. If I could reclaim my time, I appreciate the gentleman doing that, but that additional 6 months was given on the basis of the current list. That was before the adoption of the Edgar amendment.

Now, last evening, when the gentleman from Pennsylvania initially stated that he wanted to add PCB's and dioxins and other cancer-inducing substances, I think we all supported that. But the amendment did not stop there. The amendment went on to add any other substance that might have the effect of causing a chronic, long-term disease, and we then saw that number escalate from 4 or 5 to perhaps, as one gentleman said, 125 or 154, which the State of New Jersey listed on their list. Someone else said EPA came forward with an estimate of 2,500 potential substances. The gentleman from Minnesota, in his spirited remarks last night, said there were 60,000 chemicals floating around that we need to be concerned about.

Well, what is it? Is it 4? Is it 154? Is it 2,500? Is it 60,000? I am not sure we exactly know.

Given the fact that we are looking at potentially, as the gentleman from Minnesota said, 60,000 chemicals that need to be put on this list as a result of the Edgar amendment—and that is why so many of us reacted to this amendment; we thought if it had been more carefully drafted and more narrowly drawn, we would have been happy to support it. But if we are looking at 60,000, or even 2,500, there is no way the EPA in the additional 6 months of time is going to be able to come out with this list and, therefore, it is going to have to revert to the acute hazards list. We are going to have two lists; we are going to have one for a certain period of time and another for another period of time; communities are going to be confused, and what we are doing is burdening the EPA with regulatory work, with administrative work; we are draining Superfund from the specific purpose for which we are enacting it, and that is to clean up the worst sites first, to get at those on the priority list, to apply the money that is being taxed of American businesses into this fund and from the General Treasury and to go after it, clean up those sites. It is going to be an administrative nightmare, and that is why I am concerned, not with the gentleman's amendment, so to speak but with the addition of the Edgar amendment last night, which I think confuses this particular amendment.

Mr. SIKORSKI. Mr. Chairman, will the gentleman yield?

Mr. COATS. I yield to the gentleman from Minnesota.

Mr. SIKORSKI. Just so the gentleman does not further misunderstand the statement I made last night——

The CHAIRMAN. The time of the gentleman from Indiana [Mr. COATS] has expired.

(By unanimous consent, Mr. COATS was allowed to proceed for 4 additional minutes.)

Mr. SIKORSKI. I did not say that there were 60,000 toxic chemicals produced, nor did I say there are 60,000 chemicals that should even be reviewed or looked at. I clearly said in introductory comments that the context is this: There are 60,000 chemicals produced in this country in 6,000 communities. Then I went on to say that there were 5,700 accidents involving the release of toxic chemicals last year in America. Those are the facts.

Mr. COATS. If I could reclaim my time, I am not questioning whether it is 60,000—I do not know whether it is 60,000, 2,500, 5,700, 154, and I think that is what our concern was last evening. But if there are 60,000 chemicals being released, we do not know how many of those 60,000 are causes of chronic illness.

If the long-term effects of the gentleman's amendment, in terms of the establishment of chronic illness—and I will be happy to yield to the gentleman if he asks me to yield—if the long-term effects are unknown, and it is so uncertain as to the effect of the gentleman's amendment, then I think it legitimately requires us to raise a question as to the effects of the amendment last night and particularly the effect as it relates to the amendment offered by the gentleman from Delaware [Mr. CARPER].

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. COATS. I yield to the gentleman from New Jersey.

Mr. FLORIO. I thank the gentleman for yielding.

Mr. Chairman, I think this is being made much more complicated than it really is. What we are talking about is the gentleman's amendment to the list that is required. There are two lists that are required under this provision, that is, the basic law that we are attempting to deal with here.

This is an amendment to the list of acutely toxic chemicals.

The gentleman's amendment last night dealt with chronic chemicals.

In that sense, what the amendment of the gentleman from Delaware is doing is saying the law requires that this list be published. We hope that it will be, but if after 18 months no such list of acute toxic chemicals is, in fact, published, then the list that EPA has just published unofficially, after a 9-month study, with no legislative authority, as they have announced, is going to be the list. That is going to be the provision that they are going to live with.

I do not think that is particularly offensive. And the way that EPA gets out of this is by doing what the law says between now and the next 18 months.

Mr. LENT. Mr. Chairman, will the gentleman yield?

Mr. COATS. I yield to the gentleman from New York.

Mr. LENT. I think that had this amendment been offered last evening, before the vote on the Edgar amendment, it might have been far less objectionable, or at least less confusing, than the impact of the amendment appears to be today. But with the passage of the Edgar amendment, it is unclear, at least to me what significance the list of 403 would have.

EPA estimates that the Edgar amendment will require the listing of several thousand new substances, most of them having no relationship to the criteria used to establish the draft list of 403.

The impact of the Edgar amendment last night was to extend the list of substances which the Administrator in his judgment deems to be extremely toxic to the same list, to add chemicals such as vinyl chloride, benzene, asbestos, polychlorinated biphenyls, which are known to cause or are suspected of causing cancer, birth defects, genetic mutations, or other chronic health defects in humans.

Mr. CHAIRMAN. The time of the gentleman from Indiana [Mr. Coats] has again expired.

Mr. LENT. Mr. Chairman, I ask unanimous consent that the gentleman from Indiana [Mr. Coats] be allowed to proceed for 4 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

Mr. EDGAR. Mr. Chairman, reserving the right to object—and I will not object—I remind all of us that we are under very strict time considerations here, and I think that it is important that full debate on this issue be given within the limitations of the time restraints.

Mr. Chairman, I withdraw my reservation of objection.

Mr. COATS. We are cognizant of that time restriction, and we will do the best we can to get to a resolution.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. The Chair will advise the members of the Committee that there are remaining 17 minutes after this 4 minutes, 21 minutes remaining for debate on this title at this time.

Mr. COATS. Mr. Chairman, I yield to the gentleman from New York [Mr. Lent].

Mr. LENT. Is it my understanding that the sponsor of the amendment has agreed or is willing to extend the period of time that the EPA has to promulgate this list beyond the 12 months provided in the underlying legislation?

Mr. CARPER. If the gentleman will yield, with the adoption of the Edgar amendment last evening, I realize that that makes somewhat more difficult the task of the EPA in compiling this list.

In the spirit of compromise, I have already agreed to extend from 12 to 18 months. A suggestion has been made here today that we, given the adoption of the Edgar amendment last night, further extend that to 24 months. I am willing to accept that, if that is an agreement we can all live with.

Mr. LENT. Well, not that I am in any way trying to bargain with the gentleman, but if the gentleman would ask unanimous consent to make the amendment to 24 months, I think the minority would be prepared to agree to the amendment.

Mr. CARPER. If the gentleman will yield, having heard that, I will make a unanimous consent request that in my amendment the number "18" be replaced by the number "24."

Mr. LENT. If the gentleman will yield further, I believe there are two places in the statute where the time has to be changed, in order for it to be coherent, from 12 to 24 months.

The CHAIRMAN. The Clerk will report the modification.

The Clerk read as follows:

> On line 2 of the Carper amendment, strike "18 month" and insert "24 month."

Mr. COATS. I yield to the gentleman from Delaware [Mr. Carper] for an additional unanimous consent request.

Mr. CARPER. Mr. Chairman, there are two places in my amendment where the figure "18" occurs, and my intent is for the change of "18" to "24" occur in both places in my amendment.

Mr. COATS. I think the gentleman will have to make another unanimous consent request to do that.

Mr. CARPER. Mr. Chairman, I ask unanimous consent that in both places in my amendment where the number "18" was read that we insert "24" in lieu of "18" in both places.

The CHAIRMAN. Is there objection to the request of the gentleman from Delaware?

There was no objection.

The amendment, as modified, is as follows:

> Amendment offered by Mr. Carper; as modified: Page 279, after line 19, insert: "If the Administrator fails to publish such list within such 24 month period, the list shall consist of the Acute Hazards List developed by the Administrator as part of its Federal Initiative for Responding to Accidental Releases of Air Toxics (described in the July 26, 1985, notice from the Office of Solid Waste and Emergency Response of the Environmental Protection Agency) until such list is published.".
>
> Page 279 line 9, delete "12" and insert "24".

Mr. EDGAR. Mr. Chairman, will the gentleman yield?

Mr. COATS. I yield to the gentleman from Pennsylvania.

Mr. EDGAR. I want my colleagues to be clear. I realize the gentleman in his debate was arguing about an amendment that was already successful last evening. The amendment that the gentleman from Delaware is offering is a very good amendment, it is now listed at 24 months, and it has nothing to do with the amendment of last evening. This is simply the development of a list of acute chemicals by EPA, and it is a hammer, it is a way of specifically giving EPA the pressure to come up with that important list.

I thank the gentleman for his amendment. But, to be clear, it does not have anything to do with what we did last night. I really appreciate his leadership.

Mr. COATS. I beg to differ with the gentleman, and I yield to the gentleman from New York.

Mr. LENT. I would just like to state that the gentleman from Pennsylvania amended—and I have a copy of his amendment before me—at page 279 of the bill, line 18, and the gentleman added certain language to that list of substances which was the so-called acute list.

☐ 1105

The CHAIRMAN. The time of the gentleman from Indiana [Mr. COATS] has expired.

(On request of Mr. LENT and by unanimous consent, Mr. COATS was allowed to proceed for 2 additional minutes.)

Mr. COATS. I continue to yield to the gentleman from New York [Mr. LENT].

Mr. LENT. So we are talking about, my point is we are talking about one list which, up until the time your amendment was offered, was a list entirely involving extremely toxic substances, or acute substances, and you then added to that a further list of unknown quantities somewhere between 2,000 and 10,000 of chemicals that might cause chronic health effects.

The amendment of the gentleman from Delaware impacts on that list. It is one list.

Mr. EDGAR. Mr. Chairman, will the gentleman yield?

Mr. COATS. I yield to the gentleman from Pennsylvania.

Mr. EDGAR. I thank the gentleman. If you look at the Carper amendment, it develops a concern for a specific list of chemicals. The gentleman on the other side have been particularly concerned about this list being so large. The gentleman from Pennsylvania intends his amendment, which is already successful and passed, to include a very narow list of chemicals as determined by EPA's toxicology list, and we believe it would be in the neighborhood of 150 chemicals.

I see no problem with the Carper amendment trying to get a specific list out of EPA of those hazardous substances which are toxic. I thank the gentleman for his amendment, and I just simply want to say we won the battle last evening on one amendment; I do not think we ought to confuse the gentleman from Delaware's amendment with the debate that we had last evening.

Mr. COATS. Mr. Chairman, just to wrap up here, I think we have cleared up the problem with the time delay thanks to the gentleman's unanimous-consent request. In response to the gentleman from Pennsylvania, that is what the argument was about last night; whether it was 154 or 2,500 as the EPA stated, or 60,000 as one gentleman stated, and because of that confusion, and because of the relationship to this list, that is why we raised the question. But I think we have covered it with the extension of time.

The CHAIRMAN. The question is on the amendment, as modified offered by the gentleman from Delaware [Mr. CARPER].

The amendment as modified was agreed to.

The CHAIRMAN. Are there further amendments to title III?

If not, the Clerk will designate title IV.

The text of title IV is as follows:

[NOTE - Title IV is previously reproduced and may be found at p.3874]

The CHAIRMAN. The Chair will advise the Members that under the unanimous-consent request agreed to there are 30 minutes allotted for consideration of amendments to title IV.

AMENDMENT OFFERED BY MR. MCKERNAN

Mr. McKERNAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. McKERNAN: Page 336, beginning on line 20, strike out "for a period of three years beginning on

the effective date of this section, any State which on such date" and insert in lieu thereof the following: "any State which on the date of enactment of this section".

Mr. McKERNAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Maine?

There was no objection.

(Mr. McKERNAN asked and was given permission to revise and extend his remarks.)

Mr. McKERNAN. Mr. Chairman, this is a simple amendment; it has to do with States rights. Under title IV we create a Federal oilspill liability fund. Part of that provision is to preempt existing State funds which are funded in the same manner. What my amendment would do would be to simply grandfather from that preemption the eight States which have the same type of funds funded by fees on the conveyance of oil.

It seems to me to be rather simple. The history on this legislation predates my services in Congress. It is my understanding that some accommodations have been made over the years in an attempt to have a Federal oilspill liability law actually passed. Obviously, those accommodations have not worked because it has never become law.

Whatever the reason for making those accommodations to preempt State funds, I think those reasons do not exist today in the context under which we take up the oilspill liability provisions. In fact, in my view this preemption is ludicrous when we take it up as part of the Superfund bill.

Let us just think about what we are doing in the context of our debate here today. What we are saying, if we allow the preemption in title IV is that we are not going to allow States which have already taken the initiative to protect their coastlines, to maintain their funds after a 3-year grace period because we do not want to put the extra burden on those people who transport oil to pay into a Federal fund which is going to amount to $375 million, and also have to pay into eight State funds.

What really bothers me about that is that much of this oil is being transported on foreign vessels and I think that States ought to have that right. What really bothers me is that we are talking about this preemption in light of other provisions in this legislation which is in fact a $10 billion tax on industry for the Superfund, and we are saying, "But, fine, States, you have a right to protect your ground water; you have a right to protect yourselves from hazardous wastes and you can put additional burdens onto business if you feel it is important to protect your environment. I support that approach and I think it ought to be also extended to the oilspill liability to say that States ought to have the right to continue to protect their coastlines as well where much of our industry, at least in the State of Maine, exists.

To summarize on this legislation, there are eight States whose funds would be preempted. They are Florida, Maine, Maryland, New Hampshire, New Jersey, New York, North Carolina, and Washington. I just ask that this House accept my amendment to give us, the coastal States who have shown the initiative in the past, the opportunity to maintain our funds and to protect our coastlines as we see fit.

Mr. LENT. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I rise in strong opposition to the amendment. This so-called State preemption issue has been a troublesome point for this oilspill legislation over the years. I have great admiration for the gentleman and his perseverance on this question, and I can understand why the State of Maine and a number of other States have concerns about the provisions in our oilspill bill which would limit the authority of a State to require contributions to a State-level fund which addresses precisely the same actions and damages as does the proposed Federal oilspill fund.

On the other hand, the oil industry has raised what seems to me a very legitimate concern about, in effect, double taxation.

I believe that the proposed oilspill provisions in the substitute will more than adequately address the legitimate concerns of the States in obtaining rapid access to substantial sums of money to finance prompt, comprehensive initial response and cleanup actions. The oilspill legislation will also assure rapid and fair compensation for innocent injured parties whose property or livelihood has been damaged or destroyed by an oilspill.

I urge my colleagues to understand

that the oilspill provisions in the substitute do not, repeat not, preempt existing State funds, even when those funds do perform the same functions as the Federal legislation. States will be free to maintain their funds indefinitely; however, a few States will have to find a different financing source, rather than financing their funds through an earmarked tax.

Moreover, to be absolutely sure that we are not adversely affecting the States' legitimate interests, the oilspill provisions are designed so that the limitation on financing of State funds will not go into force until 3½ years after enactment. This will give time to assure that the Federal oilspill fund is operating well, before the State funds are affected in any way.

Mr. Chairman, the gentleman from Maine's amendment was overwhelmingly defeated in the Merchant Marine and Fisheries Committee.

For these reasons, I urge my colleagues to oppose the gentleman's amendment.

□ 1115

Mr. SNYDER. Mr. Chairman, I move to strike the last word, and I rise in opposition to the amendment offered by the gentleman from Maine.

The issue of preemption has been one of those which, in the long history of the development of this legislation, has been compromised—painfully so to some, I might add. What remains in the bill in the way of preemptive language is, in my opinion, woefully deficient, but the language has been agreed upon for some time. Now the gentleman would have us once more tinker with the preemption provision by grandfathering the oil pollution cleanup funds in eight States. This is unacceptable, for reasons which I shall explain.

If we continue to doctor this provision in the name of States rights, or for whatever reason, we need not have any Federal legislation, for the States will remain free to have in perpetuity their own oilspill liability and cleanup programs that largely duplicate the one we are trying to enact. Without preemption, even in the limited form contained in the bill, I, for one, would have great difficulty in supporting title IV of this bill, a piece of legislation for which we have all labored long and hard.

Mr. Chairman, to put the preemption issue in its coldest, harshest light, I see no reason why the Congress should respond to the wishes of State bureaucracies who wish to perpetuate themselves. And, in truth, that's what we're really faced with in the States' positions on preemption. Enactment of this legislation without the gentleman's amendment will in no way compromise what we're all concerned with: Protection and restoration of resources and persons damaged by oilspills.

I might remind the Members of one additional matter: In putting together the compromise bill, we provided an additional benefit to the States by granting them a priority, over private citizens or any other claimant, in processing their claims for reimbursement from the oilspill trust fund. I initially opposed that move, but in the spirit of compromise I was willing to bend. The time for bending on the State preemption issued is now, however, past.

I must at least my admiration for the preseverance of the gentleman from Maine. This is not the first time he has proposed to eliminate or water down the preemption language. Earlier this year, a similar amendment offered in the Merchant Marine Committee lost by a 30-to-9 vote. A second effort during markup of the Superfund bill likewise went down to a resounding defeat. I submit that the gentleman's efforts might appropriately be memorialized it the next John Cameron Swayze Timex commercial, "He took a licking but kept on ticking."

Let's give him that chance. In the strongest possible terms, I urge a "no" vote on the gentleman's amendment.

Mr. Chairman, there is just no reason why a barge going down the river ought to pay the 50 States and the Federal state also. It is a Federal fund, and the purpose of the whole program and the whole bill is to have one overall fund so they do not have to mess with 50 different State bureaucracies.

Mr. HUTTO. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Florida.

Mr. HUTTO. Mr. Chairman, I know that this is a matter that we fought in committee over and over a number of times, but I want to commend the gentleman for introducing this amendment, because in the State of Florida we have had an oil-spill law that has worked real well since, I believe, the year 1970. We have $30 million in it. We have a coastline of well over a thousand miles.

It is my understanding that the Superfund originally prohibited the States from cleanups, and we realize that that was a mistake. The reauthorization is correcting that problem. So why are we going forward and doing the same thing with oilspills?

It seems to me that the States that have prepared for this should not be preempted from protecting their coastlines from oilspills. Can the gentleman give the rationale for treating them differently?

Mr. SNYDER. Mr. Chairman, the rationale is, if you want each State to continue to do that, then we ought not to have Federal oilspill legislation.

Mr. HUTTO. What about the Superfund?

Mr. SNYDER. Well, this is a standing-free-alone title IV, which is oil spill. A deep-draft barge going down the coast will be hit paying into each of the State funds as he goes down the coastline, and that is entirely different from a hazardous waste site, I might say.

The truth of the matter is we are suggesting a Federal fund to do away with that bureaucracy.

The CHAIRMAN. The time of the gentleman from Kentucky [Mr. Snyder] has expired.

(By unanimous consent, Mr. Snyder was allowed to proceed for 1 additional minute.)

Mr. SNYDER. Mr. Chairman, the people going up and down the coastline will pay into one fund, and that is where it will be, instead of paying into, if they are going down the coast, 8 or 10 State funds and then the Federal fund, too. You do not need the Federal fund if you are going to have all those State funds.

Mr. McKERNAN. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Maine.

Mr. McKERNAN. Mr. Chairman, the problem with the gentleman's argument is that there has not been a new fund established since 1979. This amendment only grandfathers those which are already in existence, and therefore none of those States which the gentleman is worried about on the river are in fact going to be able to establish new funds, so you are not going to have that problem.

If in fact States were in a position where they wanted to have their own funds, they would have already done it, and what we are doing is saying that we are going to have a Federal fund to make up for what we feel is a lack of vision on the part of a lot of the States that have not done [illegible].

Mr. SNYDER. Mr. Chairman, industry's position has been that they support the Federal fund so they do not have to deal with 7 or 8 or 10 bureaucracies.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, I appreciate the gentleman yielding.

Mr. Chairman, just in response to the point that the gentleman made, as well as the gentleman from New York, I say that this preemption provision incorporated in the bill will not preempt the ability of States to maintain these funds for other purposes other than the direct purpose.

We went through that argument 5 years ago on Superfund.

The CHAIRMAN. The time of the gentleman from Kentucky has again expired.

(On request of Mr. Florio, and by unanimous consent, Mr. Snyder was allowed to proceed for 1 additional minute.)

The CHAIRMAN. The Chair wishes to state that we now have 15 minutes remaining for this title.

Mr. FLORIO. Mr. Chairman, if the gentleman will continue to yield on this point, we went through that argument 5 years ago on Superfund, and in fact there was just no clarity and it ended up effectively resulting in lawsuits to preempt the ability of the States to do anything remotely related to this area. If the gentleman from New York says that is not the intention, the suggestion is that is exactly what happened before and it is going to happen again, and in this bill on Superfund, if we are making it clear and unequivocal that there is no preemption, I suggest we are probably going to be back here 5 years from now doing the same thing with regard to this provision. So these things cannot be that clearly defined.

Mr. SNYDER. I suspect we will, too. That is what concerns me. We ought not to open the door to a little bit of a crack today.

Mr. BROYHILL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have a question with respect to this amendment. I would state to the gentleman from Maine and also the gentleman from Massachusetts that it is my understanding that the fund as maintained in the State of North Carolina derives its fees from fines and not from taxes.

I am concerned about this amendment. I can understand the concerns of the gentleman from Kentucky and others who have argued on this floor that you are imposing in effect double taxation, and so they are arguing for the exemption.

I would like to ask the gentleman from Maine as to whether or not he interprets the language that is in the bill to say that that language would in effect preempt the North Carolina oil spill cleanup fund.

Mr. McKERNAN. Mr. Chairman, will the gentleman yield?

Mr. BROYHILL. I yield to the gentleman from Maine.

Mr. McKERNAN. Obviously, Mr. Chairman, I am not familiar with North Carolina law. Our office has talked with people in the North Carolina office who say that the fund is a combination of fees and fines and appropriations, and for that reason, if that is the case, it would be preempted. That, I assume, is why the State of North Carolina office has been supporting this amendment. But the gentleman would have to find out the facts for himself.

Mr. BROYHILL. Mr. Chairman, we have had no communication from the State of North Carolina office here in Washington on this, and in the inquiry I made they indicated that their interpretation of the language was that the language did not affect their fund because it is not derived from taxes.

Mr. McKERNAN. If it is not derived from taxes or fees, it would not be included, and, as I say, the gentleman would have to determine whether that fund would be affected. But even if it is not, I would hope the gentleman would see the wisdom of this amendment and would be supporting it.

Mr. LENT. Mr. Chairman, will the gentleman yield on that point for a clarification?

Mr. BROYHILL. I am delighted to yield to the gentleman from New York.

Mr. LENT. Mr. Chairman, I can assure the gentleman that we have a list of those States that might be affected and those States that might not, and in the case of North Carolina, the gentleman's State would not be affected. But a more important point that I wanted to make to everyone here is that this oil spill liability section is something that has been worked on for years and years in the Committee on Merchant Marine and Fisheries. We have never been able to get it through. We have attached it to this CERCLA legislation, and for the first time we have hope that we may get the bill through the Senate and actually see it enacted into law so that our coastlines will be protected against oil spills.

The legislation we are tampering with through the device of this amendment is legislation which is very fragile. It is the result of a coalition resulting in hearings and work that was done in the Committee on Merchant Marine and Fisheries. The States are involved, the oil industry is involved, the transporters of oil are involved, and the barges are involved.

□ 1125

The system of raising the funds as is contained in this bill, containing the Federal preemption, is a keystone to the entire package holding together. If we allow the gentleman's amendment, and I am sympathetic, I come from New York. We have an oilspill liability fund and this amendment is going to somewhat discombobulate the way we collect and operate our oilspill liability fund in the State of New York, but unless this preemption goes through the way it is in the underlying legislation, we are going to unravel the whole oilspill plan.

Mr. BROYHILL. Mr. Chairman, if I could reclaim my time, as I understand it, if the State of New York wanted to have a separate fund, they could appropriate money for that purpose.

Mr. LENT. That is correct. We could do it the way North Carolina does. There is a 3½-year period in here that is given to States like New York to work out some of their system for maintaining their oilspill State fund.

Mr. BROYHILL. As long as their tax was broad based and went into the treasury and then appropriated, it would not be preempted.

Mr. LENT. The gentleman is precisely correct. The only thing we are trying to avoid here is twice taxing the same boatload of oil, once by the State and then again by the Federal Government.

Mr. SAXTON. Mr. Chairman, will the gentleman yield on that point?

Mr. BROYHILL. Yes, I am delighted to yield.

Mr. SAXTON. Mr. Chairman, the gentleman from North Carolina is correct. Those funds could be derived from other sources; however, the fact is that each State had the foresight to go forward and establish their own funds. Those funds, as in my home State, are presently set up to work with and within the Superfund process and to work outside of it as well to provide answers to questions that are not necessarily answered in a timely basis by the Superfund.

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. BROYHILL] has expired.

Mr. SHAW. Mr. Chairman, I move to strike the requisite number of words.

(Mr. SHAW asked and was given permission to revise and extend his remarks.)

Mr. SHAW. Mr. Chairman, I rise in support of the amendment offered by Mr. MCKERNAN.

Congress has been discussing the issue of a Federal oil pollution liability and compensation fund for years. Several States implemented their own funds in this period of Federal indecision and six States developed funds with the legal authority to levy taxes and fees to support the fund.

My State of Florida is one of the States that has a fund with a taxing mechanism. It has been successfully operated since 1970. The fund is statutorily capped at $30 million. This cap was reached in 1978 and taxes have not been collected since.

Florida has more miles of coastline than any other State in the country except one. We couldn't wait around for the Federal Government to design, implement, and pass into law a Federal fund. So Florida and five other States went ahead and took the necessary steps to protect their shoreline.

Now, the Merchant Marine and Fisheries provision included in H.R. 2817 would preempt Florida's ability to levy taxes 3 years after the date of enactment. I strongly believe that Florida should be commended, and not penalized, for having the foresight to step in before the Federal Government was able to, to protect our precious environmental resources.

To allow six States to continue their funds, with their taxing mechanisms, is not going to be an overly burdensome requirement on the oil companies. Please support the amendment offeaed by the gentleman from Maine. I urge you to allow the quality protection of the shorelines of these States to continue uninterrupted.

Mr. BILIRAKIS. Mr. Chairman, will the gentleman yield?

Mr. SHAW. I yield to my colleague, the gentleman from Florida.

Mr. BILIRAKIS. Mr. Chairman, I thank the gentleman for yielding.

I certainly associate myself with the gentleman's remarks and strongly support the amendment.

This amendment is, in my opinion, extremely important to my home State of Florida and to the general principle of preserving State and local authority in environmental matters.

Simply stated, the amendment would allow Florida and five other States to continue to operate separate oil pollution liability and compensation funds. If the amendment is not adopted, the taxing authority for Florida's oil pollution fund will effectively be preempted by the Federal Government in 3 years.

I think that such a preemption would be tragic and contrary to the interests Florida and the Nation and I might add, contrary to the philosophy of the Republican Party regarding States rights. Florida has successfully operated its coastal protection fund since 1970 and it has proved to be an effective mechanism for responding to coastal pollution spills. The fund has allowed a quick response to oil spills and the funds to ensure that any cleanup efforts are successfully completed.

If we allow the current bill to be approved without the present amendment we will be destroying an effective and needed program. We will not be serving the interest of protecting Florida's coastal areas. Instead, we will be destroying a good, localized program which has operated for nearly 15 years and replacing it with a centralized Federal program which could be deficient.

I urge my colleagues to support this important amendment for the interests of my home State and for the Nation as a whole. We need to always ensure that our environmental efforts suit the particular needs of local areas. If not, we risk ignoring legitimate State and local needs, and losing the benefit of the expertise and experience in environmental matters.

Mr. SHAW. Mr. Chairman, I thank the gentleman.

I think it is important to note here that Florida's fund was capped off by law in 1978 at $30 million and since 1978 no taxes have been collected, but the fund has remained.

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. SHAW. I yield to my friend, the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in support of this amendment to protect States such as Florida which already have in place effective oil spill liability trust funds. I want to compliment my colleague from Maine [Mr. McKERNAN] for leading this initiative with his amendment because this has been an important area of concern to me for more than 15 years.

I remember as a Florida State senator in 1970, writing Florida's Oil Spill Prevention and Containment Act, and it's a good law. There weren't any good oil spill laws in the Nation at that time and ours became a model for other States to follow in establishing their own oil spill laws.

The strong support for my legislation by the Florida State Legislature was the result of our experience in February 1970 when *Delian Apollon* ran aground in Tampa Bay, spilling 10,000 gallons of crude oil that formed a 20-square-mile oil slick. I remember my helpless feeling as I stood on the shoreline watching the oil spread. There was no containment gear anywhere, there was no cleanup equipment or strategy, and as a result we saw wildlife die when covered by oil, we saw beautiful boats worth hundreds of thousands of dollars damaged, and we saw our white sand beaches covered with tar balls.

We did something to protect our State from future oilspills by enacting strong legislation that went all the way to the U.S. Supreme Court where it was upheld. The legislation established an oilspill trust fund to pay for cleanup costs, requires oilspill cleanup and containment equipment to be ready in case of a spill, and provides for strong penalties for those responsible for oilspills.

The amendment we are considering today would help us protect the Florida State law. Our State law would not require the imposition of additional taxes because the Florida trust fund has reached its $30 million cap level. When the fund has reached its cap, the State, by law, must cease the collection of taxes on oil until the trust fund is drawn on, as the result of an oilspill, and falls below $25 million. The Florida law requires the State to first seek reimbursement for oilspill cleanup and containment costs from the individuals or companies responsible for the spill. The State is then directed to seek compensation from available Federal funds and programs.

The State can only draw from its trust fund when private and Federal resources prove to be insufficient to meet the cleanup needs. H.R. 2817, as written, would essentially eliminate Florida's ability to finance and maintain an oilspill trust fund. This leaves the State and its more than 8,000 miles of coastline vulnerable to unreimbursed cleanup costs.

Federal Superfund legislation enacted into law in 1980 included a similar provision that preempted the States from imposing taxes to finance the cleanup of hazardous waste sites. Experience has taught us that this preemption of the States rights to fund and maintain these trust funds has had serious adverse effects. As a result, the Superfund reauthorization we consider today eliminates the preemption of this State authority.

It, therefore, appears inconsistent that Congress would in turn impose another restriction on the States and limit their ability to adequately provide for their environmental needs in the case of oilspills.

Florida has been a leader in the passage of strict and effective legislation to prevent oil spills and to fund the expedient cleanup of accidents when they occur. We have always believed that there should be a strong Federal effort in this regard. However, until such a Federal initiative is in place and proven successful, we should not impose restrictions on States such as Florida that have taken precautions and enacted their own oilspill legislation.

Mr. Chairman, I urge my colleagues to support this amendment to afford States such as Florida protection against potential environmental damage and severe economic losses from oilspills.

Mr. SAXTON. Mr. Chairman, will the gentleman yield?

Mr. SHAW. I yield to the gentleman from New Jersey.

Mr. SAXTON. Mr. Chairman, I thank the gentleman from Florida for yielding.

I would just like to say that we ask for support on this measure, not because our States had the foresight to put these laws into place, but because they work, because they perform a needed function, a much needed function in our State.

In New Jersey, we raise every year $12 million. That $12 million goes totally toward the cleanup of oilspills and chemical spills. It is so important to our State, as it is in Florida and to the State of the gentleman from Maine and other States.

The **CHAIRMAN.** The time of the gentleman from Florida [Mr. SHAW] has expired.

The Chair would observe that there are but 5 minutes remaining for debate on title IV and any amendments thereto.

Does the gentleman from Massachusetts [Mr. STUDDS] desire to speak on this amendment?

Mr. STUDDS. Yes, I do, Mr. Chairman.

The **CHAIRMAN.** The gentleman from Massachusetts has been on his feet for some time. Debate has been essentially on this side of the aisle and it is appropriate to allow someone from the other side to speak at this time.

(At the request of Mr. SAXTON, and by unanimous consent, Mr. SHAW was allowed to proceed for 1 additional minute.)

Mr. SAXTON. Mr. Chairman, will the gentleman yield further?

Mr. SHAW. I yield to the gentleman from New Jersey.

Mr. SAXTON. The States that have spill compensation funds did so not because they wanted to spend money, not because there was some great political need to establish cash funds, but because there was a need and today there is still a need. In New Jersey there is a need. In Maine there is a need. In Florida there is a need, which has been very dramatically illustrated here this morning; so we ask those of you who are opposed to reconsider, to consider our needs as well.

We do not want double bureaucracy, but we do want the right to be able to keep our environment clean and keep these oil compensation spill funds.

I can speak from personal experience about the one in New Jersey. It is so important to our environmental cleanup and our future.

So I ask those of you who have expressed reservations about this to rethink your position and vote with us to remove this preemptive language.

Mr. SHAW. Mr. Chairman, if I might reclaim my time, I compliment the gentleman from New Jersey for his remarks and I would say to my colleagues that many of us have systems that are working. Just allow us to keep what we have.

Mr. STUDDS. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

The **CHAIRMAN.** The gentleman from Massachusetts [Mr. STUDDS] is recognized for the 4 minutes of time remaining.

Mr. STUDDS. Mr. Chairman, in the event that Members of the House who are not members of the Merchant Marine Committee or the Public Works Committee or from Maine or Florida or New Jersey have not followed every minute of this debate for the past 10 years, let me just again, as did the gentleman from Kentucky and the gentleman from New York [Mr. LENT], congratulate the gentleman from Maine. I do not know how many times he has charged up this hill and down again, but his predecessors did the same, just as nobly and with similar accents in the earlier part of the preceding decade.

This battle has been fought and refought and fought again many, many times. We have come out, as the gentleman from New York [Mr. LENT] and the gentleman from Kentucky [Mr. SNYDER] have pointed out quite correctly with a compromise.

There are States, and we have heard from the predominant ones just now, who have, to their credit, gone ahead in earlier years and established State funds. We need to rationalize the system nationally. It would make no sense at all from the point of view of an oil company or a tanker carrying oil who has got to pay a Federal fee and then one for every single State to whose ports it went. It is easy to understand the concern of the industry.

It is also easy, it seems to me, to understand the concern of the coastal States. We tried to take both into account in crafting this compromise.

This is a hoary, dignified compromise. It goes back almost 10 years. It says to those States who have already crafted funds of their own, you have 3½ years after the enactment of this Federal fund in which you are not preempted, that you can continue your own funds and which, incidentally, if the Federal fund is not working, the Congress can take a fresh look, if necessary, and see whether or not we should continue to preempt.

It also says that you can go ahead even after 3½ years, the individual coastal States if they so choose, and impose a tax on oil in their States, as long as it is not for the same purposes as those covered by the Federal bill.

You can pre-position cleanup equipment, if you want to. You can train personnel in oilspill response procedures, if you want to. You simply could not—and I think Members will understand the rationale in this—you could not in each coastal State create a fund and sustain a fund that duplicated in every respect the Federal fund, the national fund, which is set up under this bill.

Mr. Chairman, this bill is supported by the administration, by the oil industry, by environmental groups, and by virtually everybody in the Nation, except those Members who have spoken.

Mr. BIAGGI. Mr. Chairman, will the gentleman yield?

Mr. STUDDS. I yield to the gentleman from New York.

Mr. BIAGGI. Mr. Chairman, I thank the gentleman for yielding.

I think we have been all through this. It has been 10 long years. Preemption is critical. It works and it provides greater relief than the individual States can possibly provide.

The gentleman from New Jersey said they have a $12 million fund for chemicals and oilspills. My God, that is a drop in the bucket when you sometimes require $50 million or $100 million to respond to it for all the liability and cleanup costs.

It is suggested that because they were first—we congratulate them. We know about the beaches. We know about all the damage that has been done.

We are providing a Federal uniform response.

Let me give you what will happen if this preemption is tampered with. You cannot have various State laws that affect vessels engaged in interstate commerce to meet various fees, various standards, various administrative procedures, various court procedures, various degrees of proof.

Clearly, in the end what you are talking about is forum shopping.

We fought this fight for 10 years. Preemption has been critical. It has been rejected by every committee every time it has been offered.

Now we are coming to the moment of truth where we can do something. Eliminate preemption and you have destroyed the bill.

Mr. LENT. Mr. Chairman, will the gentleman yield?

Mr. STUDDS. I yield to the gentleman from New York.

Mr. LENT. Mr. Chairman, I thank the gentleman for yielding.

The gentleman mentioned some 20 coastal States which have no form of oilspill protection now that this bill would cover. It is great. We have Florida taken care of, but we do not have Georgia. We do not have Louisiana and some of the neighboring States.

This bill, the way it is drawn now with the preemption in it, would cover those neighboring States.

In addition to that, there are some 30 to 32 inland States; so if your State borders on the Mississippi River or the Missouri River or one of the hundreds of navigable inland waterways, you do not want to vote for this measure, because there is no question when this thing gets over to the Senate this title will be stripped right out of the bill.

Ms. SNOWE. Mr. Chairman, I rise in support of the amendment offered by my colleague from Maine, which would allow States to maintain funds to support their own oil pollution liability program. Representing a coastal State, I am very much aware of the effectiveness that the oil pollution liability and compensation program has provided to protect our coastlines and waterways. These coastal protection funds have given States the resources to respond to smaller oilspills in an efficient manner.

I realize that the comprehensive oil pollution liability and compensation title of this bill is designed to lift the burden for coastal protection from States such as Maine, Florida, and New Hampshire, which have their own compensation programs. However, eliminating the financing mechanism which these funds rely upon penalizes these few States which have already acted to protect their coastlines against the dangers of oil pollution.

The importance of a State fund lies in the ability to respond quickly, in order to contain oilspills and clean up the sur-

rounding environment. This expedient response is also vital to resolve claims of damaged parties whose livelihoods are severely disrupted by oil pollution. The best example of this in my own State of Maine is the lobsterman whose gear cannot be used because it has been ruined by oil pollution.

Mr. Chairman, I strongly believe that any Federal oil pollution liability and compensation program should complement State programs, not preempt them. Precluding a State's legal authority to support its own fund for financing these compensation programs would only be counterproductive and would not solve the real problem—dealing swiftly with the imminent dangers of oil pollution. For this reason, I urge Members to support Representative McKERNAN'S amendment, which will continue to allow a State to support its own oil pollution liability and compensation program.

The CHAIRMAN. All time on this title has expired.

The question is on the amendment offered by the gentleman from Maine [Mr. McKERNAN].

The question was taken; and on a division (demanded by Mr. McKERNAN) there were—ayes 10, noes 10.

RECORDED VOTE

Mr. McKERNAN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 142, noes 256, answered "present" 1, not voting 35, as follows:

[Roll No. 436]

AYES—142

Andrews
Badham
Barnard
Barnes
Bartlett
Bennett
Bilirakis
Boehlert
Boucher
Brown (CO)
Burton (CA)
Burton (IN)
Byron
Chandler
Chappell
Chappie
Coleman (MO)
Conte
Conyers
Coughlin
Courter
Craig
Crane
Daniel
Daub
de la Garza
DeLay
DeWine
Dickinson
Dicks
DioGuardi
Dornan (CA)
Dwyer
Dyson
Edgar
Edwards (CA)
Edwards (OK)
Emerson
Evans (IA)
Fascell
Fawell
Fish
Florio
Foglietta
Foley
Fuqua
Gallo
Gephardt
Gingrich
Gradison
Green
Gregg
Guarini
Hall, Ralph
Hawkins
Heftel
Henry
Hiler
Holt
Horton
Howard
Hughes
Hunter
Hutto
Ireland
Jacobs
Johnson
Kasich
Kemp
Kennelly
Kostmayer
Latta
Lehman (FL)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lightfoot
Lowery (CA)
Lowry (WA)
Mack
MacKay
Marlenee
Martin (NY)
McCollum
McEwen
McGrath
McKernan
Meyers
Mica
Michel
Mikulski
Molinari
Morrison (WA)
Mrazek
Murphy
Nelson
Obey
Penny
Pepper
Pickle
Porter
Rinaldo
Rodino
Roe
Rose
Roukema
Roybal
Rudd
Sabo
Saxton
Schneider
Schroeder
Schulze
Shaw
Siljander
Skelton
Slaughter
Smith (FL)
Smith (NE)
Smith (NJ)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Spence
Spratt
St Germain
Stenholm
Swindall
Thomas (CA)
Torricelli
Vander Jagt
Volkmer
Vucanovich
Walgren
Walker
Waxman
Whitley
Wise
Wolf
Wortley
Young (FL)
Young (MO)

NOES—256

Ackerman
Anderson
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Barton
Bateman
Bates
Beilenson
Bentley
Bereuter
Berman
Bevill
Biaggi
Bliley
Boggs
Boland
Bonior (MI)
Bonker
Borski
Bosco
Boulter
Boxer
Breaux
Brooks
Brown (CA)
Broyhill
Bruce
Bryant
Bustamante
Callahan
Campbell
Carney
Carper
Carr
Chapman
Clay
Clinger
Coats
Cobey
Coble
Coelho
Coleman (TX)
Collins
Combest
Cooper
Coyne
Crockett
Dannemeyer
Darden
Daschle
Davis
Dellums
Derrick
Dingell
Downey
Dreier
Duncan
Durbin
Dymally
Early
Eckart (OH)
Eckert (NY)
English
Erdreich
Evans (IL)
Fazio
Fiedler
Fields
Flippo
Ford (MI)
Fowler
Frank
Franklin
Frenzel
Frost
Gaydos
Gejdenson
Gekas
Glickman
Gordon
Gray (IL)
Grotberg
Gunderson
Hall (OH)
Hamilton
Hammerschmidt
Hansen
Hatcher
Hayes
Hefner
Hendon
Hertel
Hopkins
Hoyer
Hubbard
Huckaby
Hyde
Jeffords
Jenkins
Jones (NC)
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kastenmeier
Kildee
Kindness
Kleczka
Kolbe
Kolter
Kramer
LaFalce
Lagomarsino
Lantos
Levin (MI)
Lipinski
Livingston
Lloyd
Loeffler
Long
Luken
Lundine
Lungren
Madigan
Manton
Markey
Martin (IL)
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCandless
McCloskey
McCurdy
McDade
McHugh
McMillan
Miller (CA)
Miller (WA)
Mineta
Mitchell
Moakley
Mollohan
Monson
Montgomery
Moody
Moore
Morrison (CT)
Murtha
Natcher
Nichols
Nielson
Nowak
Oakar
Oberstar
Olin
Owens
Oxley
Packard
Panetta
Parris
Pashayan
Pease
Perkins
Petri
Pursell
Quillen
Rahall
Ray
Regula
Reid
Richardson
Ridge

Dixon
Donnelly
Dorgan (ND)
Dowdy
Leach (IA)
Lehman (CA)
Leland
Lent
Ritter
Roberts
Robinson
Roemer

Rogers
Rostenkowski
Rowland (CT)
Rowland (GA)
Russo
Savage
Schaefer
Scheuer
Schuette
Schumer
Seiberling
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Sikorski
Skeen
Slattery
Smith, Denny (OR)
Snyder
Solarz
Staggers
Stallings
Stangeland
Stark
Stokes
Strang
Stratton
Studds
Stump
Sundquist
Sweeney
Swift
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (GA)
Torres
Traficant
Traxler
Udall
Valentine
Vento
Visclosky
Watkins
Weaver
Weber
Weiss
Wheat
Whitehurst
Whitten
Williams
Wilson
Wirth
Wolpe
Wright
Wyden
Yates
Yatron
Young (AK)
Zschau

ANSWERED "PRESENT"—1

Gonzalez

NOT VOTING—35

Addabbo
Akaka
Alexander
Bedell
Boner (TN)
Broomfield
Cheney
Feighan
Ford (TN)
Garcia
Gibbons
Gilman
Goodling
Gray (PA)
Hartnett
Hillis
Leath (TX)
Lott
Lujan
McKinney
Miller (OH)
Moorhead
Myers
Neal
O'Brien
Ortiz
Price
Rangel
Roth
Sisisky
Smith (IA)
Solomon
Towns
Whittaker
Wylie

☐ 1150

The Clerk announced the following pair:

On this vote:

Mr. Gibbons for, with Mr. Alexander against.

Messrs. EMERSON, SENSENBRENNER, COBLE, BARTLETT, MINETA, ZSCHAU, ROBERTS, SKEEN, and COYNE and Mrs. BOXER changed their votes from "aye" to "no."

Mrs. HOLT and Messrs. HUNTER, MARLENEE, CRANE, DeLAY, FOGLIETTA, MRAZEK, ANDREWS, OBEY, SKELTON, LATTA, BARTLETT, KOSTMAYER and EMERSON changed their votes from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. HEFTEL of Hawaii. Mr. Chairman, I ask unanimous consent to enter into a colloquy with the gentleman from New Jersey [Mr. Florio].

The CHAIRMAN. Without objection, the gentleman from Hawaii is recognized for 1 minute.

There was no objection.

☐ 1205

Mr. HEFTEL of Hawaii. Mr. Florio, last November 29, 1984, you received a letter from EPA Administrator Lee Thomas that responded to an inquiry you made in regard to EPA's decision to propose six pesticide-contaminated well sites in Hawaii for listing on the national priorities list. Mr. Thomas stated that there was no legal impediment to either listing the sites or taking response actions under CERCLA even though cost recovery is limited.

In spite of this statement, there appears to be some hesitancy on the part of EPA to list pesticide contaminated ground water sites. In its original reauthorization proposal, EPA, in fact, requested that such sites be excluded from eligibility but this proposal was not adopted in the bill before us today. Mr. Florio, would you please clarify whether ground water or well sites are eligible for cleanup under Superfund regardless of the nature of the contamination, that is, regardless of whether the contamination resulted from a legal application of pesticides or from a spill?

Mr. FLORIO. If the gentleman will yield, pesticide contaminated ground water cleanup is included under both the current Superfund law and the proposed reauthorization legislation that we are debating today. Your observation that cost recovery is limited is also correct insofar as the law exempts cost recovery in the case of legally applied pesticides. While this exemption exists it certainly should not hinder cleanup at existing sites.

Mr. HEFTEL of Hawaii. I thank the gentleman for the clarification.

The CHAIRMAN. Are there additional amendments to title IV?

Hearing none, the Clerk will designate title V.

The text of title V is as follows:

[NOTE.- Title V is previously reproduced and may be found at p. 3937]

AMENDMENT OFFERED BY MR. DUNCAN

Mr. DUNCAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Duncan: Strike out title V of the bill and insert in lieu thereof the following:

TITLE V—AMENDMENTS OF THE INTERNAL REVENUE CODE OF 1954

SEC. 501. SHORT TITLE.

This title may be cited as the "Superfund Revenue Act of 1985".

PART I—SUPERFUND AND ITS REVENUE SOURCES

SEC. 511. EXTENSION OF ENVIRONMENTAL TAXES.

(a) In General.—Subsection (d) of section 4611 of the Internal Revenue Code of 1954 (relating to termination) is amended to read as follows:

"(d) Application of Taxes.—The taxes imposed by this section shall apply after October 31, 1985, and before October 1, 1990."

(b) Technical Amendment.—Section 303 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is hereby repealed.

(c) Effective Date.—The amendments made by this section shall take effect on November 1, 1985.

SEC. 512. INCREASE IN TAX ON PETROLEUM.

(a) Increase in Tax.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum) are each amended by striking out "0.79 cent" and inserting in lieu thereof "4 cents (4.6 cents for 1989 and 1990)".

(b) Effective Date.—The amendments made by this section shall take effect on November 1, 1985.

SEC. 513. INCREASE IN TAX ON CERTAIN CHEMICALS.

(a) Increase in Rate of Tax; Lead Added as Taxable Chemical.—Subsection (b) of section 4661 of the Internal Revenue Code of 1954 (relating to amount of tax imposed on certain chemicals) is amended by striking out the table contained in such subsection and inserting in lieu thereof the following:

"In the case of:	The tax (before any inflation adjustment) is the following amount per ton:	
	For calendar year 1985, 1986, 1987, or 1988:	For calendar year 1989 or 1990:
Organic substances:		
Acetylene	$4.31	$4.56
Benzene	4.31	4.56
Butadiene	4.31	4.56
Butane	4.31	4.56
Butylene	4.31	4.56
Ethylene	4.31	4.56
Methane	3.04	3.22
Napthalene	4.31	4.56
Propylene	4.31	4.56
Toluene	4.31	4.56
Xylene	9.25	9.50
Inorganic substances:		
Ammonia	3.72	3.94
Antimony	3.94	4.17
Antimony trioxide	3.94	4.17
Arsenic	3.94	4.17
Arsenic trioxide	3.94	4.17
Barium sulfide	3.94	4.17
Bromine	3.94	4.17
Cadmium	3.94	4.17
Chlorine	3.57	3.78
Chromite	1.35	1.42
Chromium	3.94	4.17
Cobalt	3.94	4.17
Cupric oxide	3.94	4.17
Cupric sulfate	3.94	4.17
Cuprous oxide	3.94	4.17
Hydrochloric acid	1.10	1.16
Hydrogen fluoride	3.94	4.17
Lead	3.94	4.17
Lead Oxide	3.94	4.17
Mercury	3.94	4.17
Nickel	3.94	4.17
Nitric acid	3.45	3.65
Phosphorous	3.94	4.17
Potassium dichromate	3.94	4.17
Potassium hydroxide	3.94	4.17
Sodium dichromate	3.94	4.17
Sodium hydroxide	3.29	3.49
Stannic chloride	3.94	4.17
Stannous chloride	3.94	4.17
Sulfuric acid	0.91	0.97
Zinc chloride	3.94	4.17
Zinc sulfate	3.94	4.17."

(b) Inflation Adjustments in Amount of Tax.—Section 4661 of such Code is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) Inflation Adjustments in Amount of Tax.—

"(1) In general.—In the case of any taxable chemical sold in a calendar year after 1986, the amount of the tax imposed by subsection (a) shall be the amount determined under subsection (b) increased by the applicable inflation adjustment for such calendar year.

"(2) Applicable inflation adjustment.—

"(A) In general.—In the case of a taxable chemical, the applicable inflation adjustment for the calendar year is the percentage (if any) by which—

"(i) the applicable price index for the preceding calendar year, exceeds

"(ii) the applicable price index for the applicable base year.

"(B) Applicable price index.—For purposes of subparagraph (A), the applicable price index for any calendar year is the average for the months in the 12-month period ending on September 30 of such calendar year of—

"(i) in the case of organic substances, the producer price index for basic organic chemicals as published by the Secretary of Labor, or

"(ii) in the case of inorganic substances, the producer price index for basic inorganic chemicals as published by the Secretary of Labor.

"(C) Applicable base year.—For purposes of subparagraph (A), the applicable base year is—

"(i) 1985 in the case of the adjustments for 1987 and 1988, and

"(ii) 1988 in the case of the adjustment for 1990.

"(3) No adjustment for 1989.—No adjustment shall be made under paragraph (1) for taxable chemicals sold in calendar year 1989.

"(4) Rounding.—If any increase determined under paragraph (1) is not a multiple of 1 cent, such increase shall be rounded to the nearest multiple of 1 cent (or, if the increase determined under paragraph (1) is a multiple of 1/2 of 1 cent, such increase shall be increased to the next higher multiple of 1 cent)."

(c) Exemption for Exports of Taxable Chemicals.—

(1) Section 4662 of such Code (relating to definitions and special rules) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) Exemption for Exports of Taxable Chemicals.—

"(1) Tax-free sales.—

"(A) In general.—No tax shall be imposed under section 4661 on the sale by the manufacturer or producer of any taxable chemical for export, or for resale by the purchaser to a second purchaser for export.

"(B) Proof of export required.—Rules similar to the rules of section 4221(b) shall apply for purposes of subparagraph (A).

"(2) Credit or refund where tax paid.—

"(A) In general.—Except as provided in subparagraph (B), if—

"(i) tax under section 4661 was paid with respect to any taxable chemical, and

"(ii) such chemical was exported by any person,

credit or refund (without interest) of such tax shall be allowed or made to the person who paid such tax.

"(B) Condition to allowance.—No credit or refund shall be allowed or made under subparagraph (A) unless the person who paid the tax establishes that he—

"(i) has repaid or agreed to repay the amount of the tax to the person who exported the taxable chemical, or

"(ii) has obtained the written consent of such exporter to the allowance of the credit or the making of the refund.

"(3) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection."

(2) Paragraph (1) of section 4662(d) of such Code (relating to refund or credit for certain uses) is amended—

(A) by striking out "the sale of which by such person would be taxable under such section" and inserting in lieu thereof "which is a taxable chemical", and

(B) by striking out "imposed by such section on the other substance manufactured or produced" and inserting in lieu thereof "imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (b) or (e) of this section)".

(d) Special Rules for Certain Chemicals.—

(1) Repeal of exemption for chemicals derived from coal.—

(A) Section 4662(b) of such Code (relating to exemptions; other special rules) is amended by striking out paragraph (4) and by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(B) Paragraph (3) of section 4662(d) of such Code is amended by striking out "subsection (b)(5)" each place it appears and inserting in lieu thereof "subsection (b)(4)".

(2) Exemption for lead having transitory presence during extracting process.—Clause (i) of section 4662(b)(5)(B) of such Code (relating to substance having transitory presence during extracting process), as redesignated by paragraph (1), is amended by inserting "lead," before "lead oxide".

(3) Special rule for xylene.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (5) the following new paragraph:

"(6) Special rule for xylene.—Except in the case of any substance imported into the United States or exported from the United States, the term 'xylene' does not include any separated isomer of xylene."

(4) Special rule for nitric acid used in production of nitrocellulose.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (6) the following new paragraph:

"(7) Special rule for nitric acid used in production of nitrocellulose.—The tax imposed under section 4661 on nitric acid used by the producer of such acid in the production of nitrocellulose shall not exceed $0.24 per ton."

(e) Exemption for Certain Recycled Chemicals.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (7) the following new paragraph:

"(8) Recycled chromium, cobalt, nickel, and lead.—

"(A) In general.—No tax shall be imposed under section 4661(a) on any chromium, cobalt, nickel, or lead which is diverted or recovered in the United States from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process).

"(B) Exemption not to apply while corrective action uncompleted.—Subparagraph (A) shall not apply during any period that required corrective action by the taxpayer is uncompleted.

"(C) Required corrective action.—For purposes of subparagraph (B), required corrective action shall be treated as uncompleted during the period—

"(i) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to—

"(I) a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, or

"(II) a final order under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

"(ii) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

"(D) Solid waste.—For purposes of this paragraph, the term 'solid waste' has the meaning given such term by section 1004 of the Solid Waste Disposal Act, except that such term shall not include any byproduct, coproduct, or other waste from any process of smelting, refining, or otherwise extracting any metal."

(f) Exemption for Animal Feed Substances.—

(1) In general.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (8) the following new paragraph:

"(9) Substances used in the production of animal feed.—

"(A) In general.—In the case of—

"(i) nitric acid,

"(ii) sulfuric acid,

"(iii) ammonia, or

"(iv) methane used to produce ammonia,

which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

"(B) Qualified animal feed substance.—For purposes of this section, the term 'qualified animal feed substance' means any substance—

"(i) used in a qualified animal feed use by the manufacturer, producer, or importer,

"(ii) sold for use by any purchaser in a qualified animal feed use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

"(C) Qualified animal feed use.—The term 'qualified animal feed use' means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

"(D) Taxation of nonqualified sale or use.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical."

(2) Refund or credit for substances used in the production of animal feed.—Subsection (d) of section 4662 of such Code (relating to refunds and credits with respect to the tax on certain chemicals) is amended by adding at the end thereof the following new paragraph:

"(4) Use in the production of animal feed.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(9), and

"(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(9) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section."

(g) Certain Exchanges by Taxpayers Not Treated as Sales.—Subsection (c) of section 4662 of such Code (relating to use by manufacturers) is amended to read as follows:

"(c) Use and Certain Exchanges by Manufacturer, Etc.—

"(1) Use treated as sale.—Except as provided in subsections (b) and (e), if any person manufactures, produces, or imports any taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

"(2) Special rules for inventory exchanges.—

"(A) In general.—Except as provided in this paragraph, in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of an inventory exchange with another person—

"(i) such exchange shall not be treated as a sale, and

"(ii) such other person shall, for purposes of section 4661, be treated as the manufacturer, producer, or importer of such chemical.

"(B) Registration requirement.—Subparagraph (A) shall not apply to any inventory exchange unless—

"(i) both parties are registered with the Secretary as manufacturers, producers, or importers of taxable chemicals, and

"(ii) the person receiving the taxable chemical has, at such time as the Secretary may prescribe, notified the manufacturer, producer, or importer of such person's registration number and the internal revenue district in which such person is registered.

"(C) Inventory exchange.—For purposes of this paragraph, the term 'inventory exchange' means any exchange in which 2 persons exchange property which is, in the hands of each person, property described in section 1221(1)."

(h) Effective Dates.—

(1) In general.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on November 1, 1985.

(2) Repeal of tax on xylene for periods before October 1, 1985.—

(A) Refund of tax previously imposed.—In the case of any tax imposed by section 4661 of the Internal Revenue Code of 1954 on the sale or use of xylene before October 1, 1985, such tax (including interest, additions to tax, and additional amounts) shall not be assessed, and if assessed, the assessment shall be abated, and if collected shall be credited or refunded (with interest) as an overpayment.

(B) Waiver of statute of limitations.—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of subparagraph (A) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

(C) XYLENE TO INCLUDE ISOMERS.—For purposes of this paragraph, the term "xylene" shall include any isomer of xylene whether or not separated.

(3) INVENTORY EXCHANGES.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by subsection (g) shall apply as if included in the amendments made by section 211 of the Hazardous Substance Response Revenue Act of 1980.

(B) RECIPIENT MUST AGREE TO TREATMENT AS MANUFACTURER.—In the case of any inventory exchange before January 1, 1986, the amendment made by subsection (g) shall apply only if the person receiving the chemical from the manufacturer, producer, or importer in the exchange agrees to be treated as the manufacturer, producer, or importer of such chemical for purposes of subchapter B of chapter 38 of the Internal Revenue Code of 1954.

(C) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any inventory exchange before January 1, 1986, the amendment made by subsection (g) shall not apply if the manufacturer, producer, or importer treated such exchange as a sale for purposes of section 4661 of such Code and paid the tax imposed by such section.

(D) REGISTRATION REQUIREMENTS.—Section 4662(c)(2)(B) of such Code (as added by subsection (g)) shall apply to exchanges made after December 31, 1985.

SEC. 514. REPEAL OF POST-CLOSURE TAX AND TRUST FUND.

(a) REPEAL OF TAX.—

(1) Subchapter C of chapter 38 of the Internal Revenue Code of 1954 (relating to tax on hazardous wastes) is hereby repealed.

(2) The table of subchapters for such chapter 38 is amended by striking out the item relating to subchapter C.

(b) REPEAL OF TRUST FUND.—Section 232 of the Hazardous Substance Response Revenue Act of 1980 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1983.

SEC. 515. WASTE MANAGEMENT TAX.

(a) GENERAL RULE.—Chapter 38 of the Internal Revenue Code of 1954 (as amended by section 514 of this Act) is amended by adding after subchapter B the following new subchapter:

"Subchapter C—Hazardous Waste Management Tax

"Sec. 4671. Waste management tax.
"Sec. 4672. Exemptions; reduction of tax where prior taxable event.
"Sec. 4673. Special rules for waste water treatment, incineration, etc.
"Sec. 4674. Backup tax on generator.
"Sec. 4675. Definitions and special rules.

"SEC. 4671. WASTE MANAGEMENT TAX.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on—

"(1) the receipt of hazardous waste at a qualified hazardous waste management unit,

"(2) the receipt of hazardous waste for transport from the United States for the purpose of ocean disposal, and

"(3) the exportation of hazardous waste from the United States.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) with respect to each ton of hazardous waste shall be determined in accordance with the following table:

If the taxable event is:	Land Disposal	Any Other Taxable Event
"For calendar year:	The tax per ton is:	
1986	$36.00	$3.60
1987	40.00	4.00
1988	42.00	4.00
1989	20.00	2.00
1990	24.00	2.00.

"(2) DEFINITIONS RELATING TO AMOUNT OF TAX.—For definition of—

"(A) hazardous waste, see section 4675(a)(1), and

"(B) land disposal and any other taxable event, see section 4675(a)(5).

"(c) LIABILITY FOR TAX.—

"(1) WASTE RECEIVED AT MANAGEMENT UNITS.—The tax imposed by subsection (a)(1) shall be paid by the owner or operator of the qualified hazardous waste management unit.

"(2) WASTE RECEIVED FOR TRANSPORT FROM THE UNITED STATES.—The tax imposed by subsection (a)(2) shall be paid by the person holding the permit issued for transport for ocean disposal under section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972.

"(3) WASTE EXPORTED.—The tax imposed by subsection (a)(3) shall be paid by the exporter.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1990.

"SEC. 4672. EXEMPTIONS; REDUCTION OF TAX WHERE PRIOR TAXABLE EVENT.

"(a) EXEMPTION FOR CERTAIN REMOVAL AND REMEDIAL ACTIONS, ETC.—The tax imposed by section 4671 shall not apply to the receipt or export of hazardous waste pursuant to—

"(1) a corrective action specified in—

"(A) an initial or final order, or

"(B) a proposed or final permit,

issued by the Administrator under the Solid Waste Disposal Act or a State under a hazardous waste program authorized under section 3006 of such Act,

"(2) a proposed or final closure plan approved by the Administrator or such a State,

"(3) a removal or remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 which has been selected or approved by the Administrator, or

"(4) an action to correct an emergency situation arising from a product spill which is certified by the Administrator to the Secretary as carrying out the purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

"(b) Exemption for Waste Received at Any Federal Facility.—The tax imposed by section 4671 shall not apply to any hazardous waste received at any facility owned by the United States.

"(c) Reduction in Tax Where Prior Taxable Event.—

"(1) In general.—If—

"(A) tax under section 4671 or 4674 was paid with respect to any hazardous waste, and

"(B) tax under section 4671 is subsequently imposed on such waste (hereinafter in this subsection referred to as the 'later taxable event'),

then the tax under section 4671 on the later taxable event shall be reduced by the amount determined under paragraph (2).

"(2) Amount of reduction.—The amount of the reduction determined under this paragraph is the product of—

"(A) the weight of hazardous waste involved in the later taxable event, multiplied by

"(B) the lesser of—

"(i) the highest rate of tax paid under section 4671 or 4674 with respect to any prior taxable event involving such waste (determined without regard to this subsection), or

"(ii) the rate of tax imposed by section 4671 with respect to the later taxable event (as so determined).

"SEC. 4673. SPECIAL RULES FOR WASTE WATER TREATMENT, INCINERATION, ETC.

"(a) Exemption for Waste Received at Certain Waste Water Treatment Units.—The tax imposed by section 4671 shall not apply to hazardous waste received at any waste water treatment unit.

"(b) Incineration, Etc. Within 90 Days of Receipt.—

"(1) In general.—Under regulations prescribed by the Secretary, if—

"(A) tax under section 4671 was paid with respect to the receipt of any hazardous waste at any qualified hazardous waste management unit or for transport described in section 4671(a)(2), and

"(B) such waste is incinerated on land (or the equivalent of incineration on land) by any person within 90 days after the date of the first receipt referred to in subparagraph (A),

then the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4671.

"(2) Equivalent of incineration.—For purposes of subparagraph (A), a method, technique, or process shall be treated as the equivalent of incineration on land if—

"(A) such method, technique, or process meets detailed performance standards established by the Environmental Protection Agency, and

"(B) such standards require a destruction and removal efficiency for the hazardous waste involved at least equivalent to the destruction and removal efficiency applicable to incineration on land.

"(c) Qualified Chemical Fuels or Solvents.—

"(1) In general.—Under regulations prescribed by the Secretary, if—

"(A) tax under section 4671 was paid with respect to any hazardous waste,

"(B) such waste is used by any person in the production of any qualified chemical fuel or solvent, and

"(C) such fuel or solvent is by such person sold for use or used in any industrial or commercial use,

then the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4671.

"(2) Qualified chemical fuel or solvent.—For purposes of subparagraph (A), the term 'qualified chemical fuel or solvent' means any chemical or solvent which is determined by the Administrator as not being a hazardous waste.

"(d) Recycling of Batteries.—Under regulations prescribed by the Secretary, if—

"(1) tax under section 4671 was paid with respect to the receipt of any battery at a qualified hazardous waste management unit, and

"(2) the recycling of such battery begins at such a unit by any person within 90 days after the date of the first receipt of such battery at any qualified hazardous waste management unit,

then the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4671.

"(e) Tax To Apply While Corrective Action Not Completed.—

"(1) In general.—The exemption provided by subsection (a) shall not apply (and no credit or refund shall be allowed under this section) with respect to any activity conducted at a facility (or part thereof) during the period that required corrective action remains uncompleted with respect to such facility (or part).

"(2) Required corrective action.—For purposes of paragraph (1), required corrective action shall be treated as uncompleted during the period—

"(A) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, and

"(B) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

"(3) RATE OF TAX WITH RESPECT TO WASTE WATER TREATMENT.—The rate of tax imposed by section 4671 by reason of this subsection with respect to hazardous waste received at any waste water treatment unit shall be the amount determined in accordance with the following table:

For calendar years:	The tax per ton is:
1986, 1987, or 1988	19 cents
1989 or 1990	13 cents.

"SEC. 4674. BACKUP TAX ON GENERATOR.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on each ton of hazardous waste which, as of the close of the 270-day period beginning on the day after the day on which such waste was generated, has not been—

"(1) received at a qualified hazardous waste management unit,

"(2) received for transport from the United States for the purpose of ocean disposal, or

"(3) exported from the United States.

"(b) RATE OF TAX.—The rate of the tax imposed by subsection (a) shall be the rate of tax applicable to land disposal under section 4671 at the end of the 270-day period described in subsection (a).

"(c) LIABILITY FOR TAX.—The tax imposed by subsection (a) shall be paid by the generator of the hazardous waste.

"(d) EXEMPTIONS.—

"(1) SMALL GENERATORS.—The tax imposed by subsection (a) shall not apply to hazardous waste generated during any month if the generator of such waste does not generate more than 100 kilograms of hazardous waste during such month.

"(2) WASTE LEGALLY DISPOSED OF IN PUBLICLY OWNED TREATMENT WORKS.—The tax imposed by subsection (a) shall not apply to hazardous waste disposed of in any publicly owned treatment works if the disposal of such waste is not in violation of Federal, State, or local law.

"(3) OTHER EXEMPTIONS TO APPLY.—The exemptions provided by subsections (a) and (b) of section 4672 shall apply to the tax imposed by subsection (a).

"(4) EXEMPTIONS UNDER REGULATIONS; APPLICATION OF LOWER RATE.—The Secretary may prescribe regulations which provide exemptions from the tax imposed by subsection (a) (or the application of a lower rate) which are not inconsistent with the purposes of this section.

"(e) GENERATOR.—For purposes of this section, the term 'generator' means the person whose act or process produces the hazardous waste.

"(f) TERMINATION.—No tax shall be imposed by this section on waste generated after September 30, 1990.

"SEC. 4675. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) HAZARDOUS WASTE.—The term 'hazardous waste' means any waste which is listed or identified as of the date of the enactment of the Superfund Revenue Act of 1985 under section 3001 of the Solid Waste Disposal Act. Rainwater shall not be treated as hazardous waste unless mixed with hazardous waste (as defined in the preceding sentence).

"(2) QUALIFIED HAZARDOUS WASTE MANAGEMENT UNIT.—The term 'qualified hazardous waste management unit' means the specified area of land or structure—

"(A) which isolates the hazardous wastes within a qualified hazardous waste facility, and

"(B) which is subject to the requirements for obtaining interim status or a final permit under subtitle C of the Solid Waste Disposal Act.

"(3) QUALIFIED HAZARDOUS WASTE MANAGEMENT FACILITY.—The term 'qualified hazardous waste management facility' means any facility, as defined under subtitle C of the Solid Waste Disposal Act, which has received a permit or is accorded interim status under—

"(A) section 3005 of the Solid Waste Disposal Act, or

"(B) a State program authorized under section 3006 of such Act.

"(4) OCEAN DISPOSAL.—The term 'ocean disposal' means the incineration or dumping of hazardous waste over or into ocean waters or the waters described in section 101(b) of the Marine Protection, Research, and Sanctuaries Act of 1972, pursuant to section 102 of such Act.

"(5) DEFINITIONS RELATING TO AMOUNT OF TAX.—

"(A) LAND DISPOSAL.—The term 'land disposal' means a taxable event described in section 4671(a)(1) with respect to a qualified hazardous waste management unit which is a landfill, surface impoundment, waste pile, or land treatment unit.

"(B) LANDFILL, ETC.—For purposes of subparagraph (A), the terms 'landfill', 'surface impoundment', 'waste pile' and 'land treatment unit' have the respective meanings given such terms in regulations prescribed by the Administrator pursuant to sections 3004 and 3005 of the Solid Waste Disposal Act.

"(C) OTHER TAXABLE EVENT.—The term 'any other taxable event' means—

"(i) a taxable event described in section 4671(a)(1) which is not land disposal, and

"(ii) a taxable event described in paragraph (2) or (3) of section 4671(a).

"(6) WASTE WATER TREATMENT UNIT.—The term 'waste water treatment unit' means any qualified hazardous waste management unit which is an integral and necessary part of a treatment system—

"(A) for which a permit is required under section 402 of the Clean Water Act,

"(B) which is subject to pretreatment standards under subsection (b) or (c) of section 307 of the Clean Water Act, or

"(C) which is a zero discharge treatment system—

"(i) which, if the system discharged into navigable waters, would comply with effluent limitation guidelines prescribed under paragraph (2) or (4) of section 304(b) of the Clean Water Act,

"(ii) which, if the system discharged into a publicly owned treatment works, would comply with the pretreatment standards described in subparagraph (B), or

"(iii) if no such guidelines or standards have been prescribed, which employs biological treatment.

The term 'waste water treatment unit' shall not include any qualified hazardous waste management unit which receives for storage or final disposition concentrated treatment residues resulting from wastewater treatment.

"(7) Administrator.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(8) United states.—The term 'United States' has the meaning given such term by section 4612(a)(4).

"(9) Ton.—The term 'ton' means 2,000 pounds.

"(10) Fractional part of ton.—In the case of a fraction of a ton, the tax imposed by this subchapter shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) Treatment of Containers, Etc. Which Are Related to Injection Units.—For purposes of this subchapter—

"(1) any container, tank, or surface impoundment which, with respect to any hazardous waste, is used to treat or store such waste before underground injection of such waste (whether or not the waste when injected is hazardous waste) into an injection well, and

"(2) the injection well into which such waste is injected,

shall be treated as a single hazardous waste management unit.

"(c) Disposition of Revenues From Puerto Rico and the Virgin Islands.—The provisions of subsection (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by this subchapter."

(b) Information Reporting Requirement.—

(1) In general.—Subpart A of part III of subchapter A of chapter 61 of such Code is amended by inserting after section 6039D the following new section:

"SEC. 6039E. INFORMATION WITH RESPECT TO MANAGEMENT TAX ON HAZARDOUS WASTE.

"Each person on whom a tax is imposed under subchapter C of chapter 38 shall (at such time and in such manner as the Secretary may require) submit to the Secretary such information as the Secretary may require, including information which such person is required to provide the Administrator of the Environmental Protection Agency under the Solid Waste Disposal Act. To the extent provided in regulations prescribed by the Secretary, the preceding sentence shall also apply to persons not described therein with respect to information which the Secretary determines is necessary or appropriate to the administration of such subchapter."

(2) Penalty.—Subchapter B of chapter 68 of such Code (relating to assessable penalties) is amended by redesignating section 6708 (relating to mortgage credit certificates) as section 6709 and by adding at the end thereof the following new section:

"SEC. 6710. FAILURE TO PROVIDE INFORMATION WITH RESPECT TO MANAGEMENT TAX ON HAZARDOUS WASTE.

"(a) In General.—Any person who fails to meet any requirement imposed by section 6039E shall pay a penalty of $100 for each day during which such failure continues, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection with respect to any failure shall not exceed $50,000.

"(b) Penalty in Addition to Other Penalties.—The penalty imposed by this section shall be in addition to any other penalty provided by law."

(3) Conforming amendments.—

(A) The table of sections for subpart A of part III of subchapter A of chapter 61 of such Code is amended by inserting after the item relating to section 6039D the following new item:

"Sec. 6039E. Information with respect to management tax on hazardous waste."

(B) The table of sections for subchapter B of chapter 68 of such Code is amended by redesignating the item relating to mortgage credit certificates as section 6709 and by adding at the end thereof the following new item:

"Sec. 6710. Failure to provide information with respect to management tax on hazardous waste."

(c) Penalty for Negligence To Apply to Environmental Taxes.—Section 6653 of such Code (relating to failure to pay tax) is amended by adding at the end thereof the following new subsection:

"(i) Negligence Penalty To Apply to Environmental Taxes.—For purposes of applying paragraphs (1) and (2) of subsection (a), paragraph (1) of subsection (a) shall be treated as including a reference to underpayments (as defined in subsection (c)) of tax imposed by chapter 38 (relating to environmental taxes)."

(d) Clerical Amendment.—The table of subchapters for chapter 38 of such Code is amended by adding after the item relating to subchapter B the following new item:

"Subchapter C. Hazardous waste management tax."

(e) Effective Dates.—

(1) In general.—The amendments made by this section shall take effect on January 1, 1986.

(2) Backup tax on generator.—Section

4674 of the Internal Revenue Code of 1954 (relating to backup tax on generator), as added by this section, shall apply to waste generated after December 31, 1986.

SEC. 516. TAX ON CERTAIN IMPORTED SUBSTANCES DERIVED FROM TAXABLE CHEMICALS.

(a) GENERAL RULE.—Chapter 38 of the Internal Revenue Code of 1954 is amended by adding after subchapter C the following new subchapter:

"SUBCHAPTER D—TAX ON CERTAIN IMPORTED SUBSTANCES

"Sec. 4677. Imposition of tax.
"Sec. 4678. Definitions and special rules.

"SEC. 4677. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable substance sold or used by the importer thereof.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amount of the tax imposed by subsection (a) with respect to any taxable substance shall be the amount of the tax which would have been imposed by section 4661 on the taxable chemicals or petroleum used as materials or process fuel in the manufacture or production of such substance if such taxable chemicals or petroleum had been sold in the United States for use in the manufacture or production of such taxable substance.

"(2) RATE WHERE IMPORTER DOES NOT FURNISH INFORMATION TO SECRETARY.—If the importer does not furnish to the Secretary (at such time and in such manner as the Secretary shall prescribe) sufficient information to determine under paragraph (1) the amount of the tax imposed by subsection (a) on any taxable substance, the amount of the tax imposed on such taxable substance shall be 5 percent of the appraised value of such substance as of the time such substance was entered into the United States for consumption, use, or warehousing.

"(c) EXEMPTIONS FOR SUBSTANCES TAXED UNDER SECTIONS 4611 AND 4661.—No tax shall be imposed by this section on the sale or use of any substance if tax is imposed on such sale or use under section 4611 or 4661.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1990.

"SEC. 4678. DEFINITIONS AND SPECIAL RULES.

"(a) TAXABLE SUBSTANCE.—For purposes of this subchapter—

"(1) IN GENERAL.—The term 'taxable substance' means any substance which, at the time of sale or use by the importer, is listed as a taxable substance by the Secretary for purposes of this subchapter.

"(2) DETERMINATION OF SUBSTANCES ON LIST.—A substance shall be listed under paragraph (1) if the Secretary determines, in consultation with the Administrator of the Environmental Protection Agency and the Commissioner of Customs, that such substance generally has more than 50 percent of its value derived (as materials or as process fuel) from taxable chemicals or petroleum (determined on the basis of the predominant method of production).

"(3) MODIFICATIONS TO LIST.—The Secretary may add or remove substances from the list under paragraph (2) as necessary to carry out the purposes of this subchapter.

"(b) OTHER DEFINITIONS.—For purposes of this subchapter—

"(1) IMPORTER.—The term 'importer' means the person entering the taxable substance for consumption, use, or warehousing.

"(2) TAXABLE CHEMICALS; UNITED STATES.—The terms 'taxable chemical' and 'United States' have the respective meanings given such terms by section 4662(a).

"(c) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4677."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 38 of such Code is amended by adding after the item relating to subchapter C the following new item:

"SUBCHAPTER D. TAX ON CERTAIN IMPORTED SUBSTANCES."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 417. IMPOSITION OF SUPERFUND EXCISE TAX.

(a) IN GENERAL.—Chapter 38 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER E—SUPERFUND SURCHARGE TAX

"Sec. 4685. Imposition of tax.
"Sec. 4686. Definitions and special rules.
"Sec. 4687. Return requirement; taxable period; payment of tax.
"Sec. 4688. Exemptions.
"Sec. 4689. Import-Export neutrality.
"Sec. 4690. Tax to apply only if shortfall in Superfund.

"SEC. 4685. IMPOSITION OF TAX.

"(a) IMPOSITION AND RATE OF TAX.—There is hereby imposed on each taxable person (as defined in section 4686(a)) carrying on one or more trades or businesses (as defined in section 4686(b)) in the United States a tax in respect of such trade or business activities in an amount determined in accordance with the following tables:

"(1) With respect to those trade or business activities conducted by or on behalf of the taxable person that constitute category A activities:

"If the number of employees properly allocable to such trade or business in accordance with subsection (c) is:	The tax is:
Not more than 5	$0
At least 6 but less than 10.	$16.
At least 10 but less than 25.	$35.
At least 25 but less than 250.	$50 plus $50 for each additional increment of 25 employees in excess of 25.

250 or more	$200 plus $200 for each additional increment of 100 employees in excess of 250.

"(2) With respect to those trade or business activities conducted by or on behalf of the taxable person that constitute category B activities:

"If the number of employees properly allocable to such trade or business in accordance with subsection (c) is:	The tax is:
Not more than 5	$0
At least 6 but less than 10.	$3.75
At least 10 but less than 25.	$8.50
At least 25 but less than 250.	$12.50 plus $12.50 for each additional increment of 25 employees in excess of 100.

"If the number of employees properly allocable to such trade or business in accordance with subsection (c) is:	The tax is:
250 or more	$50 plus $50 for each additional increment of 100 employees in excess of 250.

"(3) With respect to those trade or business activities conducted by or on behalf of the taxable person that constitute category C activities:

"If the number of employees properly allocable to such trade or business in accordance with subsection (c) is:	The tax is:
Not more than 5	$0.
At least 51 but less than 100.	$9.
At least 100 but less than 250.	$13 plus $6.50 for each additional increment of 50 employees in excess of 100.
250 or more	$32.50 plus $13 for each additional increment of 100 employees in excess of 250.

"(4) With respect to those trade or business activities conducted by the taxable person that constitute category D activities:

"If the number of employees properly allocable to such trade or business in accordance with subsection (c) is:	The tax is:
Not more than 50	$0
At least 51 but less than 100.	$2.50.
At least 100 but less than 250.	$3.50 plus $1.75 for each additional increment of 50 employees in excess of 100.
250 or more	$8.75 plus $3.50 for each additional increment of 100 employees in excess of 250.

Provided, however, That in the case of trade or business activities of a taxable person that otherwise would be exempt from tax under this subsection during the taxable period by reason of the number of employees properly attributable to such trade or business activities under subsection (c), such trade or business activities nevertheless shall be subject to tax under the next succeeding bracket under which tax is imposed under paragraph (1), (2), (3), or (4) (whichever is applicable), if such trade or business activities result in the generation of more than 1000 kilograms per month of hazardous waste (as defined in section 1004 of the Resource Conservation and Recovery Act and the regulations thereunder).

"(b) Categories of Taxable Activities.—For purposes of this chapter—

"(1) Category A activities.—The term 'category A activities' means those trade or business activities that are subject to classification within Standard Industrial Classification Codes 28 (relating to chemicals and allied products) or 29 (relating to petroleum refining and related industries).

"(2) Category B activities.—The term 'category B activities' means those trade or business activities that are subject to classification within Standard Industrial Classification Codes 30 (relating to rubber and miscellaneous plastics products), 33 (relating to primary metals industries), or 34 (relating to fabricated metal products, except machinery and transportation equipment).

"(3) Category C activities.—The term 'category C activities' means those trade or business activities that consist of manufacturing (as defined in section 4001(c)) activities other than those activities described in paragraphs (1) and (2).

"(4) Category D activities.—The term 'category D activities' means those trade or business activities that consist of the provision of services (as defined in section 4001(d)) to customers, except that services for this purpose shall not include services provided by the taxable person in respect of the sale, repair, or maintenance of products manufactured by the taxpayer in carrying on category A, B, or C activities. Such sales, repair, or maintenance services shall be treated as category A, B, or C activities on the basis of the products to which such services relate.

"(c) Determination of Number of Employees and Allocation Among Taxable Categories of Activities.—For purposes of this chapter—

"(1) Determination of taxable person's total work force.—The total number of employees (as defined in section 3306(i)) of the taxable person in respect of all of its trade or business activities shall be determined by dividing the total amounts of wages paid or incurred by the taxable person (as determined under section 3306(b)) by $7,000 (or by such other ceiling on taxable wages for Federal Unemployment Tax purposes as thereafter may be adopted in section 3306(b) or its successor).

"(2) Allocation of total work force among taxable person's business activities.—

"(A) Direct labor.—All direct labor (as defined in section 4686(e)) in respect of trade or business activities of the taxable person is to be allocated among the four categories of taxable activities described in subsection (b) on the basis of the products or services to which such labor is properly attributable under principles similar to those applicable under section 471 (relating to inventoriable costs);

"(B) INDIRECT LABOR.—Indirect labor (as defined in section 4686(f)) in respect of trade or business activities of the taxable person is to be allocated among the four categories of taxable activities described in subsection (b) as follows:

"(i) indirect labor substantially all of which is directly related to, necessary for, and dedicated to particular manufacturing activities, or the provision of particular services, shall be allocated to such manufacturing activities or services,

"(ii) indirect labor other than that described in (i) shall be allocated among the categories of activities described in subsection (b) on the same proportionate basis at the labor described in subparagraph (A) is allocated among such categories.

"(C) GENERAL AND ADMINISTRATIVE LABOR.—All general and administrative labor (as defined in section 4686(f)) in respect of trade or business activities of the taxable person is to be allocated among the four categories of taxable activities described in subsection (b) on the same proportionate basis as the labor described in subparagraph (A) is allocated among such categories.

"SEC. 4686. DEFINITIONS AND SPECIAL ES.

"For purposes of this subchapter—

"(a) TAXABLE PERSON.—The term 'taxable person' means any corporation (as defined in section 7701(a)(3)) or partnership (as defined in section 7701(a)(2)). For this purpose, all corporations that are members of the same group of controlled corporations (within the meaning of section 1563(a), except that 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1)) shall be treated as a single taxable person.

"(b) TRADE OR BUSINESS.—The term 'trade or business' has the same meaning as under section 162 (relating to the deduction of trade or business expenses). In the case of a taxpayer that is a partnership, the determination of the trade or business activities of the partnership shall be made at the partnership level.

"(c) MANUFACTURING.—The term 'manufacturing' means trade or business activities that are subject to classification within Standard Industrial Classification Codes 1, 2, 7 through 14, 20 through 27, 31, 32, or 35 through 39, and such other activities as the Secretary may designate by regulation.

"(d) SERVICES.—The term 'services' means trade or business activities that are subject to classification within Standard Industrial Classification Codes 15 through 17, 40 through 67, 70, 72, 73, 75, 76, 78, 79, 80, 81, 82, 83, 84, 86, 88, or 89, and such other activities as the Secretary may designate by regulation.

"(e) DIRECT LABOR.—The term 'direct labor' means labor that is incident to and necessary for manufacturing activities, or the provision of services, and the amount of which can be identified or associated with specific products or services.

"(f) INDIRECT LABOR.—The term 'indirect labor' means labor that is associated with and necessary for manufacturing activities, or the provision of services, but which is not directly identifiable in amount with respect to specific products or services.

"(g) GENERAL AND ADMINISTRATIVE LABOR.—The term 'general and administrative labor' means labor that is undertaken in respect of administrative and other similar functions that are incident to and necessary for the taxable person's trade or business activities as a whole, rather than to particular manufacturing or service provision activities.

"(h) UNITED STATES.—The term 'United States', when used in a geographical sense, refers to the fifty States, the District of Columbia, a Commonwealth, and any possessions of the United States.

"(i) SPECIAL RULE.—The classification of particular trade or business activities within the Standard Industrial Classification Codes for purposes of this chapter shall be the classification of such activities that exists as of January 1, 1986. Any subsequent changes in such classification of trade or business activities shall be effective for purposes of this chapter only upon the approval of the Secretary. The determination of the proper classification of particular trade or business activities within the Standard Industrial Classification Codes for purposes of this chapter shall be made by the Secretary.

"SEC. 4687. RETURN REQUIREMENT; TAXABLE PERIOD; PAYMENT OF TAX.

"(a) RETURN REQUIREMENT.—

"(1) IN GENERAL.—Except as provided in this subsection, each taxable person shall file a return of the tax imposed by section 4685 for any taxable period not later than the due date (including extensions) under chapter 1 for a taxable year that is the calendar year.

"(2) EXCEPTIONS.—The Secretary may exempt by regulation any taxable person from the requirement in paragraph (1).

"(b) TAXABLE PERIOD.—For purposes of this chapter, the term 'taxable period' means the calendar year.

"(c) PAYMENT OF TAX.—In the case of any taxable person with respect to whom a tax imposed under section 4685 for any taxable period, such person shall make quarterly deposits of the estimated amount of such tax for the next succeeding taxable period.

"(d) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this chapter.

"SEC. 4688. EXEMPTIONS.

"(a) GOVERNMENT ENTITIES.—No tax shall be imposed under section 4685 on the United States, any State or political subdivision thereof, the District of Columbia, a Commonwealth or possession of the United States, or any agency or instrumentality of the foregoing: *Provided, however,* That if any such government entity shall engage in one or more activities during the taxable period that generate more than 1000 kilograms per month of hazardous waste (as defined in section 1004 of the Resource Conservation and Recovery Act and the regulations thereunder), such government entity shall be subject to a fee in an amount equal to the tax that would be imposed under section 4685 if such entity were a taxable person engaging in taxable activities described in section 4001(a)(4).

"(b) Charitable Organization.—No tax shall be imposed under section 4685 on any organization that is exempt from tax under chapter 1: *Provided, however,* That if any such organization carries on an unrelated trade or business (within the meaning of section 513) during the taxable period, such organization shall be treated as if it were a taxable person and shall be subject to the tax imposed under section 4685 to the extent of such unrelated trade or business activities.

"SEC. 4689. IMPORT-EXPORT NEUTRALITY.

"(a) Exemption for Exports.—

"(1) In general.—No tax shall be imposed under section 4685 in respect of trade or business activities of the taxable person that are directly related to the manufacturing of products, or the provision of services, which are to be exported from the United States to locations outside of the United States.

"(2) Determination of exempt amount.—In determining the amount of tax due under section 4001 for the taxable period in respect of category A, B, C, or D activities, the taxable person shall reduce the amount of tax otherwise due in respect of each such category of taxable activities by the amount that is determined as the product of:

"(A) the total amount of tax otherwise due under section 4685 in respect of such category of taxable activities from the taxable person for the taxable period (without regard to this paragraph), multiplied by

("B) a fraction, the numerator of which is the amount of gross receipts derived by the taxable person during the taxable period from the exportation from the United States of products or services attributable to such category of taxable activities, and the denominator of which is the total amount of gross receipts derived by the taxable person during the taxable period from such category of taxable activities.

"(b) Import Equalization Fee.—

"(1) In general.—There is hereby imposed on the importer with respect to the importation into the United States of products and services an import equalization fee in an amount determined under paragraph (2), which shall be imposed in addition to any duty or tariff otherwise imposed on such importation.

"(2) Determination of amount.—In the case of imports of products or services attributable to category A, B, C, or D activities (within the meaning of section 4685 (b)) conducted outside of the United States, the amount of the fee described in paragraph (1) shall be equal to the product of—

"(A) the customs value (or if there is no such customs value, the fair market value of the imported product or service (determined as of the time of importation)), multiplied by

"(B) a fraction (as determined by the Secretary), the numerator of which is the total amount of tax imposed under section 4685 in respect of category A, B, C, or D activities (whichever is applicable) during the preceding calendar year (or such earlier year as the Secretary may designate) and the denominator of which is the total gross value of the products manufactured or the services provided in the United States during such year attributable to category A, B, C, or D activities (whichever is applicable).

"(c) Regulations, Etc.—The Secretary shall publish not less than annually in an appropriate form the information described in subsection (b)(2)(B). The Secretary may promulgate such regulations as he deems necessary to carry out the provisions of this section.

"SEC. 4690. TAX TO APPLY ONLY IF SHORTFALL IN SUPERFUND.

"(a) General Rule.—

"(1) In general.—The tax imposed by this subchapter shall apply only if the Secretary determines under subsection (b) that there will be shortfall in the Superfund.

"(2) Period during which tax applies; termination of waste-end tax.—If the Secretary determines under subsection (b) that there will be a shortfall in the Superfund—

"(A) the tax imposed by this subchapter shall apply to taxable periods beginning on or after the applicable commencement date and ending before January 1, 1991, and

"(B) the taxes imposed by subchapter C (relating to hazardous waste management tax) shall not apply during any period during which the tax imposed by this subchapter applies.

"(b) Determination of Shortfall.—

"(1) In general.—Not later than July 1 of 1988 and 1989, the Secretary (in consultation with the Administrator of the Environmental Protection Agency) shall determine whether there will be a shortfall in the Superfund as of the applicable commencement date.

"(2) Applicable commencement date.—For purposes of this section, the term 'applicable commencement date' means—

"(A) January 1, 1989, in the case of the determination made not later than July 1, 1988, and

"(B) January 1, 1990, in the case of the determination made not later than July 1, 1989.

"(3) Short fall.—For purposes of paragraph (1), a shortfall in the Superfund is the excess (if any) of—

"(A) the amount the Secretary estimates will be expended from the Hazardous Substance Superfund during the period beginning on November 1, 1985, and ending on September 30, 1990, over

"(B) the sum of—

"(i) the aggregate amount the Secretary estimates will be credited to such Fund during such period (determined without regard to the tax imposed by this subchapter and without regard to any repayable advances), and

"(ii) $100,000,000.

"(c) Determination of Rate.—

"(1) In general.—Each rate of tax set forth in section 4685 shall be adjusted by a uniform percentage established by the Secretary under paragraph (2).

"(2) Determination of percentage.—The percentage determined under this paragraph is a percentage which the Secretary estimates will eliminiate the shortfall in the Superfund determined under subsection (b). The percentage determined under the preceding paragraph shall not exceed the percentage which the Secretary estimates will result in $10,000,000 being credited to the Hazardous Substance Superfund."

(b) Clerical Amendment.—The table of subchapters for chapter 38 of such Code is amended by adding at the end thereof the following new item:

"Subchapter E. Superfund surcharge tax."

SEC. 518. HAZARDOUS SUBSTANCE SUPERFUND.

(a) In General.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9504 the following new section:

"SEC. 9505. HAZARDOUS SUBSTANCE SUPERFUND.

"(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the 'Hazardous Substance Superfund' (hereinafter in this section referred to as the 'Superfund'), consisting of such amounts as may be—

"(1) appropriated to the Superfund as provided in this section,

"(2) appropriated to the Superfund pursuant to section 518(b) of the Superfund Revenue Act of 1985, or

"(3) credited to the Superfund as provided in section 9602(b).

"(b) Transfers to Superfund.—There are hereby appropriated to the Superfund amounts equivalent to—

"(1) the taxes received in the Treasury under section 4611, 4661, 4671, 4674, 4677, 4685, or 4689 (relating to environmental taxes),

"(2) amounts recovered on behalf of the Superfund under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this section referred to as 'CERCLA'),

"(3) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

"(4) penalties assessed under title I of CERCLA, and

"(5) punitive damages under section 107(c)(3) of CERCLA.

"(c) Expenditures From Superfund.—

"(1) In general.—Amounts in the Superfund shall be available, as provided in appropriation Acts, only for purposes of making expenditures—

"(A) to carry out the purposes of paragraphs (1), (2), (4), and (5) of section 111(a) of CERCLA as in effect on the date of the enactment of the Superfund Amendments of 1985, or

"(B) hereafter authorized by a law which authorizes the expenditure out of the Superfund for a general purpose covered by paragraphs (1), (2), (4), and (5) of such section 111(a) (as so in effect).

"(2) Exception for certain transfers, etc. of hazardous substances.—Amounts in the Superfund shall not be available for any transfer or disposal which could not be made but for section 118(d) of the Superfund Amendments of 1985, as in effect on the date of the enactment thereof.

"(d) Authority to Borrow.—

"(1) In general.—There are authorized to be appropriated to the Superfund, as repayable advances, such sums as may be necessary to carry out the purposes of the Superfund.

"(2) Repayment of advances.—

"(A) In general.—Advances made pursuant to this subsection shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Superfund.

"(B) Final repayment.—No advance shall be made to the Superfund after September 30, 1990, and all advances to such Fund shall be repaid on or before such date.

"(C) Rate of interest.—Interest on advances made pursuant to this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

"(e) Liability of United States Limited to Amount in Trust Fund.—

"(1) General rule.—Any claim filed against the Superfund may be paid only out of the Superfund.

"(2) Coordination with other provisions.—Nothing in CERCLA or the Superfund Amendments of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Superfund.

"(3) Order in which unpaid claims are to be paid.—If at any time the Superfund has insufficient funds to pay all of the claims payable out of the Superfund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined."

(b) Authorization of Appropriations.—There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund for fiscal year—

(1) 1986, $460,000,000,
(2) 1987, $460,000,000,
(3) 1988, $460,000,000,
(4) 1989, $460,000,000, and
(5) 1990, $460,000,000,

plus for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Act of 1980, as in effect before its repeal) as has not been appropriated before the beginning of the fiscal year involved.

(c) Conforming Amendments.—

(1) Subtitle B of the Hazardous Substance Response Revenue Act of 1980 (relating to establishment of Hazardous Substance Response Trust Fund) is hereby repealed.

(2) Paragraph (11) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"(11) 'Fund' or 'Trust Fund' means the Hazardous Substance Superfund established by section 9505 of the Internal Revenue Code of 1954;".

(d) Clerical Amendment.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9504 the following new item:

"Sec. 9505. Hazardous Substance Superfund."

(e) Effective Date.—

(1) In general.—The amendments made by this section shall take effect on November 1, 1985.

(2) Superfund treated as continuation of old trust fund.—The Hazardous Substance Superfund established by the amendments made by this section shall be treated for all purposes of law as a continuation of the Hazardous Substance Response Trust Fund established by section 221 of the Hazardous Substance Response Revenue Act of 1980. Any reference in any law to the Hazardous Substance Response Trust Fund established by such section 221 shall be deemed to include (wherever appropriate) a reference to the Hazardous Substance Superfund established by the amendments made by this section.

PART II—LEAKING UNDERGROUND STORAGE TANK TRUST FUND AND ITS REVENUE SOURCES

SEC. 521. ADDITIONAL TAXES ON GASOLINE, DIESEL FUEL, SPECIAL MOTOR FUELS, FUELS USED IN AVIATION, AND FUELS USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.

(a) General Rule.—

(1) Gasoline.—Section 4081 of the Internal Revenue Code of 1954 (relating to imposition of tax on gasoline) is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a) Tax To Fund Highway Program.—

"(1) In general.—There is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 9 cents a gallon.

"(2) Termination.—On and after October 1, 1988, the tax imposed by paragraph (1) shall not apply.

"(b) Additional Tax To Fund Leaking Underground Storage Tank Trust Fund.—

"(1) In general.—In addition to the tax imposed by subsection (a), there is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 0.2 cents a gallon.

"(2) Termination.—

"(A) In general.—The tax imposed by paragraph (1) shall not apply after the earlier of—

"(i) September 30, 1990, or

"(ii) the last day of the termination month.

"(B) Termination month.—For purposes of subparagraph (A), the termination month is the 1st month as of the close of which the Secretary estimates that the net revenues from the taxes imposed by paragraph (1) and section 4041(d) are at least $850,000,000.

"(C) Net revenues.—For purposes of subparagraph (B), the term 'net revenues' means the excess of gross revenues over amounts payable by reason of section 9506(c)(2) (relating to transfer from Leaking Underground Storage Tank Trust Fund for certain repayments and credits)."

(2) Diesel and special motor fuels; fuels used in aviation.—Section 4041 of such Code (relating to tax on special fuels) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) Additional Taxes To Fund Leaking Underground Storage Tank Trust Fund.—

"(1) Liquids other than gasoline used in motor vehicles, motorboats, or trains.—In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.2 cents a gallon on benzol, benzene, naphtha, liquefied petroleum gas, casing head and natural gasoline, or any other liquid (other than kerosene, gas oil, or fuel oil, or any product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a motor vehicle, motorboat, or train for use as a fuel in such motor vehicle, motorboat, or train, or

"(B) used by any person as a fuel in a motor vehicle, motorboat, or train unless there was a taxable sale of such liquid under subparagraph (A).

"(2) Liquids used in aviation.—In addition to the taxes imposed by subsection (c) and section 4081, there is hereby imposed a tax of 0.2 cents a gallon on any liquid—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft, or

"(B) used by any person as a fuel in an aircraft unless there was a taxable sale of such liquid under subparagraph (A).

The tax imposed by this paragraph shall not apply to any product taxable under section 4081 which is used as a fuel in an aircraft other than in noncommercial aviation.

"(3) Termination.—The taxes imposed by this subsection shall not apply during any period during which no tax is imposed by section 4081(b)."

(3) Fuel used in commercial transportation on inland waterways.—Subsection (b) of section 4042 of such Code (relating to amount of tax on fuel used in commercial transportation on inland waterways) is amended to read as follows:

"(b) Amount of Tax.—

"(1) In general.—The rate of the tax imposed by subsection (a) is the sum of—

"(A) the Inland Waterways Trust Fund financing rate, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate.

"(2) Rates.—For purposes of paragraph (1)—

"(A) the Inland Waterways Trust Fund financing rate is 10 cents a gallon, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.2 cents a gallon.

"(3) Exception for fuel taxed under section 4041(d).—The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply to the use of any fuel if tax under section 4041(d) was imposed on the sale of such fuel or is imposed on such use.

"(4) Termination of leaking underground storage tank trust fund financing rate.—The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply during any period during which no tax is imposed by section 4081(b)."

(b) Additional Taxes Not Transferred to Highway Trust Fund, Airport and Airway Trust Fund, and Inland Waterways Trust Fund.—

(1) Highway trust fund.—

(A) In general.—Subsection (b) of section 9503 of such Code (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes) is amended by adding at the end thereof the following new paragraph:

"(4) Certain additional taxes not transferred to highway trust fund.—For purposes of paragraphs (1) and (2), the taxes imposed by sections 4041(d) and 4081(b) shall not be taken into account."

(B) Conforming amendment.—Subparagraph (D) of section 9503(c)(4) of such Code (defining motorboat fuel taxes) is amended by striking out "section 4081" and inserting in lieu thereof "section 4081(a)".

(2) Airport and airway trust fund.—Subsection (b) of section 9502 of such Code (relating to transfer to Airport and Airway Trust Fund of amounts equivalent to certain taxes) is amended—

(A) by striking out "subsections (c) and (d) of section 4041" in paragraph (1) and inserting in lieu thereof "subsections (c) and (e) of section 4041", and

(B) by striking out "section 4081" in paragraph (2) and inserting in lieu thereof "section 4081(a)".

(3) Inland waterways trust fund.—Paragraph (1) of section 203(b) of the Inland Waterways Revenue Act of 1978 is amended by adding at the end thereof the following new sentence: "The preceding sentence shall apply only to so much of such taxes as are attributable to the Inland Waterways Trust Fund financing rate under section 4042(b)."

(c) Repayments for Gasoline Used on Farms, Etc.—

(1) Gasoline used on farms.—Subsection (h) of section 6420 of such Code (relating to termination) is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081(b), this section".

(2) Gasoline used for certain nonhighway purposes or by local transit systems.—

(A) Termina[illegible] not to apply to additional 0.2 cent tax.—Subsection (h) of section 6421 of such Code (relating to effective date) is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081(b), this section".

(B) Repayment of additional tax for off-highway business use to apply only to certain vessels.—Subsection (e) of section 6421 of such Code is amended by adding at the end thereof the following new paragraph:

"(4) Section not to apply to certain off-highway business uses with respect to the tax imposed by section 4081(b).—This section shall not apply with respect to the tax imposed by section 4081(b) on gasoline used in any off-highway business use other than use in a vessel employed in the fisheries or in the whaling business."

(3) Fuels used for nontaxable purposes.—

(A) Subsection (m) of section 6427 of such Code (relating to termination) is amended by striking out "Subsections" and inserting in lieu thereof "Except with respect to taxes imposed by sections 4041(d) and 4081(b), subsections".

(B) Section 6427 of such Code is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) Payments for Taxes Imposed by Section 4041(d).—For purposes of subsections (a), (b), and (c), the taxes imposed by section 4041(d) shall be treated as imposed by section 4041(a)."

(C) Paragraph (1) of section 6427(f) of such Code (relating to gasoline used to produce certain alcohol fuels) is amended by striking out "section 4081" and inserting in lieu thereof "section 4081(a)".

(d) Continuation of Certain Exemptions From Additional Taxes, Etc.—

(1) Subsection (b) of section 4041 of such Code (relating to exemption for off-highway

business use; exemption for qualified methanol and ethanol fuel) is amended by adding at the end thereof the following new paragraph:

"(3) COORDINATION WITH TAXES IMPOSED BY SUBSECTION (d).—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, rules similar to the rules of paragraphs (1) and (2) shall apply with respect to the taxes imposed by subsection (d).

"(B) LIMITATION ON EXEMPTION FOR OFF-HIGHWAY BUSINESS USE.—For purposes of subparagraph (A), paragraph (1) shall apply only with respect to off-highway business use in a vessel employed in the fisheries or in the whaling business.

"(C) TERMINATION NOT TO APPLY.—Subparagraph (C) of paragraph (2) shall not apply with respect to the taxes imposed by subsection (d)."

(2) Paragraph (3) of section 4041(f) of such Code (relating to exemption for farm use) is amended by striking out "On and after" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), on and after".

(3) The last sentence of section 4041(g) of such Code (relating to other exemptions) is amended by striking out "Paragraphs" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), paragraphs".

(4) The last sentence of section 4221(a) of such Code (relating to certain tax-free sales) is amended by striking out "4061" and inserting in lieu thereof "4081(a)".

(5) Paragraph (2) of section 6416(b) of such Code is amended by inserting "or under paragraph (1)(A) or (2)(A) of section 4041(d)" after "section 4041(a)".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on November 1, 1985.

SEC. 522. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9505 the following new section:

"SEC. 9506. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Leaking Underground Storage Tank Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Leaking Underground Storage Tank Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under sections 4041(d) and 4081(b) (relating to additional taxes on motor fuels and gasoline),

"(2) taxes received in the Treasury under section 4042 to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4042(b), and

"(3) amounts collected under section 9003(h)(6) of the Solid Waste Disposal Act.

"(c) EXPENDITURES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), amounts in the Leaking Underground Storage Tank Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures to carry out section 9003(h) of the Solid Waste Disposal Act as in effect on the date of the enactment of the Superfund Amendments of 1985.

"(2) TRANSFERS FROM TRUST FUND FOR CERTAIN REPAYMENTS AND CREDITS.—

"(A) IN GENERAL.—The Secretary shall pay from time to time from the Leaking Underground Storage Tank Trust Fund into the general fund of the Treasury amounts equivalent to—

"(i) amounts paid under—

"(I) section 6420 (relating to amounts paid in respect of gasoline used on farms),

"(II) section 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems), and

"(III) section 6427 (relating to fuels not used for taxable purposes), and

"(ii) credits allowed under section 34,

with respect to the taxes imposed by sections 4041(d) and 4081(b).

"(B) TRANSFERS BASED ON ESTIMATES.—Transfers under subparagraph (A) shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(d) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Leaking Underground Storage Tank Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or the Superfund Amendments of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Leaking Underground Storage Tank Trust Fund.

"(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Leaking Underground Storage Tank Trust Fund has insufficient funds to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9505 the following new item:

"Sec. 9506. Leaking Underground Storage

Tank Trust Fund."

(c) Effective Date.—The amendments made by this section shall take effect on November 1, 1985.

PART III—OIL SPILL LIABILITY TRUST FUND AND ITS REVENUE SOURCES

SEC. 531. INCREASE IN ENVIRONMENTAL TAX ON PETROLEUM.

(a) In General.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum), as amended by section 511 of this Act, are each amended by striking out "of 3.85 cents a barrel" and inserting in lieu thereof "at the rate specified in subsection (c)".

(b) Increase in Tax.—Section 4611 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) Rate of Tax.—

"(1) In general.—The rate of the taxes imposed by this section is the sum of—

"(A) the Hazardous Substance Superfund financing rate, and

"(B) the Oil Spill Liability Trust Fund financing rate.

"(2) Rates.—For purposes of paragraph (1)—

"(A) the Hazardous Substance Superfund financing rate is 4 cents (4.6 cents for 1989 and 1990) a barrel, and

"(B) the Oil Spill Liability Trust Fund financing rate is 1.3 cents a barrel."

(c) Credit Against Portion of Tax Attributable to Oil Spill Rate.—Section 4612 of such Code (relating to definitions and special rules) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) Credit Against Portion of Tax Attributable to Oil Spill Rate.—There shall be allowed as a credit against so much of the tax imposed by section 4611 as is attributable to the oil spill rate for any period the excess of the aggregate amount paid by the taxpayer into the Deepwater Port Liability Trust Fund and the Offshore Oil Pollution Compensation Fund over the amount of such payments taken into account under this subsection for all prior periods."

(d) Conforming Amendments.—

(1) Subsection (e) of section 4611 of such Code (relating to application of taxes), as redesignated by subsection (b), is amended to read as follows:

"(e) Application of Taxes.—

"(1) Superfund rate.—The Hazardous Substance Superfund financing rate under subsection (c) shall apply after October 31, 1985, and before October 1, 1990.

"(2) Oil spill rate.—The Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after December 31, 1985, and before October 1, 1990."

(2) Subsection (d) of section 4661 of such Code (relating to termination of tax on certain chemicals) is amended to read as follows:

"(d) Application of Taxes.—The tax imposed by this section shall apply after October 31, 1985, and before October 1, 1990."

(3) Subsection (b) of section 9505 of such Code (relating to transfers to Superfund) is amended by adding at the end thereof the following:

"In the case of the tax imposed by section 4611, paragraph (1) shall apply only to so much of such tax as is attributable to the Superfund financing rate under section 4611(c)."

(e) Effective Date.—The amendments made by this section shall take effect on January 1, 1986.

SEC. 532. OIL SPILL LIABILITY TRUST FUND.

(a) In General.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9506 the following new section:

"SEC. 9507. OIL SPILL LIABILITY TRUST FUND.

"(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the 'Oil Spill Liability Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) Transfers to Trust Fund.—There are hereby appropriated to the Oil Spill Liability Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under section 4611 (relating to environmental tax on petroleum) to the extent attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c),

"(2) amounts recovered, collected, or received under subtitle A of the Comprehensive Oil Pollution Liability and Compensation Act,

"(3) amounts remaining on the date of the enactment of this section in the Deep Water Port Liability Fund established by section 18(f) of the Deep Water Port Act of 1974, and

"(4) amounts remaining on the date of the enactment of this section in the Offshore Oil Pollution Compensation Fund established under section 302 of the Outer Continental Shelf Lands Act Amendments of 1978.

"(c) Expenditures.—

"(1) General expenditure purposes.—

"(A) In general.—Amounts in the Oil Spill Liability Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures for—

"(i) the payment of removal costs described in section 401(24)(A) of the Comprehensive Oil Pollution Liability and Compensation Act,

"(ii) the payment of claims under the Comprehensive Oil Pollution Liability and Compensation Act for damage which is not otherwise compensated,

"(iii) carrying out subsections (c), (d), (i), and (l) of section 311 of the Federal Water Pollution Control Act with respect to any discharge of oil (as defined in such section),

"(iv) carrying out section 5 of the Intervention on the High Seas Act relating to oil pollution or the substantial threat of oil pollution,

"(v) the payment of all expenses of administration incurred by the Federal Government under the Comprehensive Oil Pollution Liability and Compensation Act, and

"(vi) the payment of contributions to the International Fund under section 464 of such Act.

"(B) Special rules.—

"(i) Payments to governments only for removal costs.—Amounts shall be available under subparagraph (A) for payments to any government only for removal costs and administrative expenses related to removal costs.

"(ii) Restrictions on contributions to international fund.—Under regulations prescribed by the Secretary, amounts shall be available under subparagraph (A) with respect to any contribution to the International Fund only in proportion to the portion of such fund used for a purpose for which amounts may be paid from the Oil Spill Liability Trust Fund.

"(iii) References to other acts.—Any reference in any clause of subparagraph (A) to any Act shall be treated as a reference to such Act as in effect on the date of the enactment of this section.

"(2) Limitations on expenditures.—

"(A) $200,000,000 per incident.—The maximum amount which may be paid from the Oil Spill Liability Trust Fund with respect to any single incident shall not exceed $200,000,000.

"(B) $30,000,000 minimum balance.—Except in the case of payments described in paragraph (1)(A), a payment may be made from such Trust Fund only if the amount in such Trust Fund after such payment will not be less than $30,000,000.

"(d) Authority to Borrow.—

"(1) In general.—There are authorized to be appropriated to the Oil Spill Liability Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

"(2) Limitation on amount outstanding.—The maximum aggregate amount of repayable advances to the Oil Spill Liability Trust Fund which is outstanding at any one time shall not exceed $300,000,000.

"(3) Repayment of advances.—Rules similar to the rules of paragraph (2) of section 9505(d) shall apply for purposes of this subsection.

"(e) Liability of the United States Limited to Amount in Trust Fund.—

"(1) General rule.—Any claim filed against the Oil Spill Liability Trust Fund may be paid only out of such Trust Fund.

"(2) Coordination with other provisions.—Nothing in the Comprehensive Oil Pollution Liability and Compensation Act or the Superfund Amendments of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Oil Spill Liability Trust Fund.

"(f) Order in Which Unpaid Claims Are To Be Paid.—If at any time the Oil Spill Liability Trust Fund has insufficient funds (or is unable by reason of subsection (c)(2)) to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under such subsections, be paid in full in the order in which they were finally determined."

(b) Clerical Amendment.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9506 the following new item:

"Sec. 9507. Oil Spill Liability Trust Fund."

(c) Effective Date.—The amendments made by this section shall take effect on January 1, 1986.

PART IV—STUDIES

SEC. 541. STUDY OF IMPACT OF WASTE MANAGEMENT TAX ON DOMESTIC MANUFACTURERS.

(a) General Rule.—The Secretary of the Treasury or his delegate shall conduct a study on the effects of the tax imposed by section 4671 of the Internal Revenue Code of 1954 on the ability of domestic manufacturers to compete in international trade.

(b) Report.—Not later than July 1, 1986, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under subsection (a). Such report shall include recommendations to minimize the trade impact of such tax and there shall be considered, in making such recommendations, a waste management tax export credit, an import equalization fee, and a maximum amount of tax with respect to hazardous waste generated by economically distressed industries.

SEC. 542. STUDY OF LEAD POISONING.

(a) In General.—The Administrator of the Agency for Toxic Substances and Disease Registry shall, in consultation with the Administrator of the Environmental Protection Agency and other officials as appropriate, not later than March 1, 1986, submit to the Committee on Environment and Public Works, and the Committee on Finance, of the Senate and the Committee on Energy and Commerce, and the Committee on Ways and Means, of the House of Representatives, a report on the nature and extent of lead poisoning in children from environmental sources. Such report shall include, at a minimum, the following information:

(1) an estimate of the total number of children, arrayed according to Standard Metropolitan Statistical Area or other appropriate geographic unit, exposed to environmental sources of lead at concentrations sufficient to cause adverse health effects;

(2) an estimate of the total number of

children exposed to environmental sources of lead arrayed according to source or source types;

(3) a statement of the long term consequences for public health of unabated exposures to environmental sources of lead, including (but not limited to) diminution in intelligence and increases in morbidity and mortality; and

(4) methods and alternatives available for reducing exposures of children to environmental sources of lead.

(b) EVALUATION OF SPECIFIC SITES.—Such report shall also score and evaluate specific sites at which children are known to be exposed to environmental sources of lead due to releases, utilizing the Hazard Ranking system of the National Priorities List.

(c) AUTHORIZATION FROM SUPERFUND.—There are authorized to be appropriated from the Hazardous Substance Superfund such sums as may be necessary to prepare and submit the report required by this section.

PART V—COORDINATION WITH OTHER PROVISIONS OF THIS ACT

SEC. 551. COORDINATION.

(a) IN GENERAL.—Notwithstanding any provision of this Act not contained in this title, any provision of this Act (not contained in this title) which—

(1) imposes any tax, premium, or fee,

(2) establishes any trust fund, or

(3) authorizes amounts to be expended from any trust fund which are not also authorized by this title,

shall have no force or effect.

(b) EXCEPTION FOR PAYMENTS FROM TRANS-ALASKA PIPELINE LIABILITY FUND.—Subsection (a) shall not apply to amounts rebated to owners of oil in accordance with section 442(a) of the Comprehensive Oil Pollution Liability and Compensation Act.

In the table of contents of the bill, strike out the items relating to title V and insert in lieu thereof the following:

Title V—Amendments of the Internal Revenue Code of 1954

Sec. 501. Short title.

PART I—SUPERFUND AND ITS REVENUE SOURCES

Sec. 511. Extension of environmental taxes.
Sec. 512. Increase in tax on petroleum.
Sec. 513. Increase in tax on certain chemicals.
Sec. 514. Repeal of post-closure tax and trust fund.
Sec. 515. Waste management tax.
Sec. 516. Tax on certain imported substances derived from taxable chemicals.
Sec. 517. Imposition of superfund excise tax.
Sec. 518. Hazardous Substance Superfund.

PART II—LEAKING UNDERGROUND STORAGE TANK TRUST FUND AND ITS REVENUE SOURCES

Sec. 521. Additional taxes on gasoline, diesel fuel, special motor fuels, fuels used in aviation, and fuels used in commercial transportation on inland waterways.
Sec. 522. Leaking Underground Storage Tank Trust Fund.

PART III—OIL SPILL LIABILITY TRUST FUND AND ITS REVENUE SOURCES

Sec. 531. Increase in environmental tax on petroleum.
Sec. 532. Oil Spill Liability Trust Fund.

PART IV—STUDIES

Sec. 541. Study of impact of waste management tax on domestic manufacturers.
Sec. 542. Study of lead poisoning.

PART V—COORDINATION WITH OTHER PROVISIONS OF THIS ACT

Sec. 551. Coordination.

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Mr. ROSTENKOWSKI (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The CHAIRMAN. The Chair wants to inquire of the gentleman from Tennessee [Mr. DUNCAN] if the amendment that was just read is in fact the amendment that was printed in the RECORD pursuant to the rule.

Mr. DUNCAN. It is, Mr. Chairman.

The CHAIRMAN. The Chair recognizes the gentleman from Illinois who, the Chair understands, has another unanimous-consent request.

Mr. ROSTENKOWSKI. Mr. Chairman, as I understand it, and as agreed to with the minority, we will proceed into 45 minutes of debate on the amendment offered by Mr. DUNCAN and then 45 minutes of debate offered by the gentleman from New York [Mr. DOWNEY], that no votes be taken on either amendment, and that we reserve 15 minutes on the Duncan amendment and 15 minutes on the Downey amendment to be concluded in consideration on Tuesday next.

Mr. DUNCAN. The gentleman has a correct understanding.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

Mr. SNYDER. Reserving the right to object, Mr. Chairman, does that mean then that future proceedings on other sections of the Superfund bill will go over to Tuesday? In other words, the proposed title VI and so forth.

The CHAIRMAN. That is not mentioned in the unanimous-consent request.

Mr. ROSTENKOWSKI. If I am permitted to make that unanimous-consent request, I make that unanimous-consent request.

The CHAIRMAN. We could not complete title V. We cannot conclude title V until these amendments are considered.

Mr. SNYDER. And would not proceed at all.

The CHAIRMAN. That is the Chair's interpretation of the unanimous-consent request.

Is there objection to the request of the gentleman from Illinois?

Mr. WALKER. Reserving the right to object, Mr. Chairman, does that mean there will be no additional votes today, that we will have no more votes today, and that Members can feel free to leave?

Mr. ROSTENKOWSKI. Yes, the gentleman is correct, as I interpret it.

Mr. WALKER. I thank the chairman.

Mr. Chairman, I withdraw my reservation of objection.

There was no objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

The CHAIRMAN. The gentleman from Tennessee is recognized for 22½ minutes, and a Member opposed thereto—the Chair would inquire of the gentleman from Illinois [Mr. Rostenkowski] if he desires to have the time in opposition to the amendment of the gentleman from Tennessee.

Mr. ROSTENKOWSKI. This gentleman from Illinois expects to be recognized for half an hour in opposition to the Duncan amendment.

The CHAIRMAN. The gentleman from Illinois, consistent with his unanimous-consent request, will be recognized for 22½ minutes.

The Chair at this time recognizes the gentleman from Tennessee [Mr. Duncan] who has 22½ minutes, in behalf of his amendment.

Mr. DUNCAN. Mr. Chairman, I yield myself whatever time I may consume.

Mr. CLINGER. Mr. Chairman, will the gentleman yield?

Mr. DUNCAN. I yield to the gentleman from Pennsylvania.

(Mr. CLINGER asked and was given permission to revise and extend his remarks.)

Mr. CLINGER. Mr. Chairman, I rise in strong support of Superfund. I was a sponsor of the original Superfund Program in 1980, and I voted in favor of last year's $10.2 billion Superfund bill. So as we debate Superfund in the 99th Congress, I want to once again offer my enthusiastic support.

Superfund is the preeminent environmental bill for Congress. It represents the only hope we have of removing hazardous, carcinogenic wastes from our lands and water supplies. It represents our only promise for cleaning up the poisons now in the ground.

Back in 1980, Youngsville, PA, discovered PCB's in its water supply. At that time there was no Superfund. Do you realize that the only meaningful Federal assistance—beyond technical expertise—was available through the U.S. Coast Guard? With the knowledge we have today about the hundreds of toxic sites across the country, we must not allow such a situation to happen again.

This year's Superfund bill proposes spending $10 billion over the next 5 years. It mandates cleanup schedules, it mandates cleanup standards, it holds responsible parties liable for paying the cleanup, it requires manufacturers and users of hazardous wastes to inform local communities about the substances they use and store on the premises; in short, this year's bill puts real teeth into the program.

We must pass the strongest Superfund possible. To do otherwise would abrogate our responsibility to America's citizens.

Mr. DUNCAN. Mr. Chairman, the House has before it three very different alternatives; the Ways and Means Committee financing amendment, the Downey amendment, and the Duncan amendment.

As the 16-to-20 rollcall vote against the committee bill indicates, the presence of a VAT-like tax in the committee bill by no means indicates a consensus developed within the committee in support of it. The VAT operates like a sales tax, but is hidden from the ultimate consumer. It represents the most regressive form of taxation, falling hardest on low- and middle-income taxpayers, and will be vetoed by the President. It is likely to cost more to administer than it will raise. Coupling this broad-based tax with a popular program removes considerations of fiscal constraint from our future deliberations and guarantees that this tax will expand by leaps and bounds.

The Downey amendment unfortunately replaces the VAT with large tax increases of the type which could fatally damage certain U.S. industries—

particularly chemical industries—already handicapped in world competition. Downey includes a 1,500-percent tax increase on petroleum feedstocks, a 66-percent increase on chemical feedstocks, and a $2 billion waste-end tax, a level that seriously jeopardizes the desirable environmental qualities of a waste-end tax. Many of the feedstocks taxed are already declining in world competitiveness as foreign feedstocks are subsidize by foreign governments. Prior to the adoption of the current feedstock tax system in 1980, the chemical industry maintained a positive trade balance of $12.2 billion. Since then, that industry's contribution to the national trade balance has declined about 30 percent. Increasing the tax burden of such an industry by the levels in the Downey amendment is irresponsible, even if there were some tax policy justification, which there is not.

The Downey amendment's undue reliance on feedstock taxes is fatally flawed in a number of respects. First, many of the companies taxed were not and are not polluters. Even collectively, those taxes are responsible for only a small percentage of the waste in Superfund sites. Second, even those found responsible for toxic dumps already must pay to clean them up, and thus pay twice—once for the cleanup of those for which they were responsible and again under the feedstock tax system for the rest of the Nation where responsible parties cannot be found.

The Duncan amendment provides the fairest method of providing sufficient resources for the Superfund program at a guaranteed level of $10.3 billion if this amount is necessary to implement the program passed by the Congress. It includes a triggered environmental surcharge to assure the needed resources. The triggering is not at the discretion of the administration. Rather, if it is necessary to provide resources to fund the Superfund program, it automatically goes into effect at the level necessary to provide sufficient resources.

There is no question that we will increase the economic resources committed to the cleanup of hazardous waste. For us to fail to assure that the next generation is protected from the dangers posed by hazardous waste sites would be unthinkable. We should, and I believe the Duncan bill would, fund cleanup of past problems on a fair and efficient basis and encourage the prevention of future waste problems.

There is one principle above all others that Congress must respect in the reauthorization process. Business and economic expansion and protection of our environment are not mutually exclusive goals. The Duncan bill respects both.

I urge Members to support the Duncan amendment. First and foremost, I urge Members to vote against Downey. My proposal costs less.

The CHAIRMAN. The gentleman from Tennessee [Mr. DUNCAN] has consumed 5 minutes.

The Chair recognizes the gentleman from Illinois [Mr. ROSTENKOWSKI].

Mr. ROSTENKOWSKI. Mr. Chairman, I yield such time as he may consume to the gentleman from New York [Mr. DOWNEY].

Mr. DOWNEY of New York. Mr. Chairman, the Duncan approach is a profoundly new approach to the financing of Superfund. My guess is there should be two ways that we should evaluate any form of tax, especially one that is as important as this: Is the tax effective? Will it do the job? Is it fair? Is it reasonable? Does it tax the right parties?

I think by both those measurements the Duncan proposal fails the test. First of all, I do not think there is a person in this Chamber who believes for a moment that the Superfund bill should be less than $10 billion. The number of national priority sites that dot this land are probably anywhere between 2,000 or 4,000. It depends on whose view you want to trust. An $8 billion bill, which is indeed what the Duncan bill is, it is only a 4-year bill, is simply inadequate to do the job. That would be, I think, its most telling fault.

Second, the mechanism of the tax is also somewhat unusual, and I use the term "unusual" advisedly, not because I want to deprecate its authors by any means, but one thing I have come to learn on the tax committee is that unless you are familiar with the tax, unless you understand its administrative history, you really cannot make predictions as to how much money it will raise.

☐ 1230

Now, the Duncan tax attempts to try and figure out the industries that pollute and then assess a surcharge based on the number of employees, and it uses a fairly complicated code to do that. We have absolutely no experience whatsover with this mechansim as a tax, No. 1.

Let me read for my colleagues what the Department of the Treasury says about the Duncan tax and some of its shortcomings—in particular who would be liable under this tax. And, remember, the principle that we are trying to preserve in Superfund is the principle that the polluter should pay the tax or the persons responsible for the chemical agents should pay the tax. This is the Department of the Treasury giving an example:

> A firm and a taxed industry that employs a large number of people would have a high tax liability, even if the firm did not generate hazardous waste. Another firm in the same industry that generates large quantities of hazardous waste but has a smaller number of employees would have a lower Superfund surcharge liability. Further, two firms in the same industry that generate the same amount of hazardous waste would pay different Superfund surcharges if one firm is more labor intensive than the other.

So here we have this perfectly absurd idea of taxing people by the number of employees that they have, not by the number or the amount of waste that they generate.

Now, what about the connection, the nexus, if you will, between the people who do the polluting and the people who pay the tax? The Treasury states further:

> Although the surcharge purports to impose tax based upon waste generated by broad industry segments, industries that generate 93 percent of the hazardous waste would account for 45 percent of the Superfund surcharge revenues, while industries that generate 7 percent of the hazardous waste would account for over 55 percent of the Superfund surcharges.

Now, here you see the connection, the umbilical cord between the people who pollute and the people who create the pollution severed by the Duncan amendment. It does not make any sense.

Now, some of the other provisions of the Duncan amendment that also need to be closely examined are the provisions for general revenue. One of the things that we have attempted to accomplish with respect to general revenue is to keep it as small as possible, and the reason for that should be painfully obvious. The idea that we're going to take money from the total governmental pie and apply it to a specific problem makes very, very little sense. It makes even less sense in light of the fact that we have a $200 billion deficit.

What does the Duncan proposal do? The Duncan proposal decides that more general revenue, not less, is necessary; $2.3 billion of general revenue or 23 percent of the total financing for Superfund will come out of the pockets of taxpayers who have nothing to do with the problem that Superfund sites pose.

So we have these three problems, and let me reiterate them for the multitude here on the floor listening in rapt attention to what I am saying.

The Duncan proposal is a 4-year, not a 5-year, proposal. It raises $8 billion, not $10 billion, for the Superfund. Everyone agrees that more is necessary, not less. The only time more is better or more is less is with light beer, not with Superfund. It decides that it is going to have a wholly new tax apply to the financing of Superfund. And I have already highlighted the pitfalls of that.

When you take the fact that you have this new exotic method of taxation, you have the enormous amount of general revenue, you are struck with two inescapable facts: that the Duncan proposal does not raise as much money as is needed and comports much more closely in the amount to what the Senate has proposed, a $7 billion or a $5 billion program.

So for these reasons, my colleagues, I would urge you to reject the Duncan initiative, and when the opportunity to debate the Frenzel-Downey proposal is upon you, that you listen carefully to our proposal.

Mr. Chairman, I reserve the balance of my time.

Mr. DUNCAN. Mr. Chairman, I yield 7 minutes to the gentleman from Louisiana [Mr. Moore].

(Mr. MOORE asked and was given permission to revise and extend his remarks.)

Mr. MOORE. Mr. Chairman, we need to think through where we are in this bill, as we will be voting next Tuesday on these amendments so we need to understand what we are voting on. There are three ways being offered to the Members of the House on how to finance Superfund in this tremendous increase from $1.6 billion up to a $10 billion fund. The first way is the committee bill that has an excise tax in it. That is new, along with a waste end tax, and that excise tax is not a value added tax, it is an excise tax, just like any Federal excise tax, of which there are many.

Second, we have the Downey amendment and, third, there is the Duncan amendment.

The Duncan amendment is being offered, and if it passes, is to be in place of the Downey amendment. Then if the Downey amendment is defeated by the passage of Duncan, we will be in a position of then comparing Duncan with the bill's provisions on revenues.

I strongly support the bill. It is a broad-based fair tax that will finally reach all polluters, not just a few, as current law does under the feedstock proposal and as Mr. Downey would continue to do by significantly increasing that burden in his amendment.

Having said that, I am going to strongly support the Duncan amendment, as it is far superior and far more fair than is the Downey amendment. And so the first vote you will have, Duncan, vote for Duncan. It is a much better way of financing and raising this money.

Downey simply says, "We want a superfund, all right, but we don't want to pay for it, we want somebody else to pay for it. Those people who are paying for it now, that is simple, that is easy, just increase their tax burden manyfold, whether it is fair or not, whether they are the ones who are causing all of waste or not, don't worry about it, just increase their tax."

The Duncan amendment does not do that. The Duncan amendment tries to get at this universal problem of who is responsible and who is getting the benefits.

The Duncan amendment increases the use of general revenue funds, and that is a recognition that all of us are responsible for waste in this country and all of us ought to share the burden. If you are a consumer and you are buying goods and those goods cause a generation of toxic waste in their production, then we as consumers ought to pay part of it. And, second, if you are a manufacturer manufacturing something causing these wastes and you do not pay a feedstock tax now, you should pay a tax. So the use of general revenue funds by the Duncan amendment is a recognition that if we cannot have a general environmental surtax across the country, which is what we should have, this is the next best thing. We will take it out of general revenues, recognizing that general tax revenues will.

The second thing that Duncan does in his amendment is to create a new environmental surcharge on manufacturers only if that money is needed. Therein is a point of wisdom, if you do not need the money, do not raise it. He simply says that if the spending gets to a certain point and you need more, this tax triggers in and you raise it. That is certainly a wise point of view. But, second and more importantly, it is a broad-based tax. It is a tax that tries to get to all of those people who are manufacturing and causing the toxic waste, to start with.

The gentleman from Tennessee recognizes, as he said in his eloquent statement of a few minutes ago, that the way the tax works now, you are putting all the tax burden on a very few manufacturers in this country who are not causing anywhere near all of the toxic waste. In the case of the chemical industry, they cause only 13 percent, but you want them to pay all the taxes. That is not because you are being fair or it is not because there is not a better vehicle, it is because, let's face it, you just do not want anybody in your district to pay any taxes. That is not fair.

The Duncan amendment recognizes that. It goes to the general fund, and then it goes to a general environmental surtax which is far superior to the Downey amendment, and I would urge my colleagues to vote for it.

Mr. RITTER. Mr. Chairman, will the gentleman yield?

Mr. MOORE. I yield to the gentleman from Pennsylvania.

Mr. RITTER. The gentleman makes an interesting point about the distribution of this tax, and I would just like to comment about the difference between generating hazardous substances and disposing of them. Those who favor the Downey-Frenzel amendment have been talking about generation of hazardous substances by the oil industry and by the chemical industry as if these were the same substances that appeared in the waste dumps which have to be cleaned up. This is an extremely important point, because what we are dealing with is not what is generated but we are dealing with what has been disposed of and that is sitting out there in the waste dumps that need to be cleaned up and that between 15 and 20 percent of these wastes at the disposal sites are coming from chemical and oil companies, and the rest is coming from a cross-section of American industry as generally represented in some kind of broad-based tax.

Now, that is where the responsibility should lie for cleaning up, not to sock it to one narrow segment, to lose jobs in that important crucial segment of the American economy, and actually to increase the prices of a whole host of products that the manufacturing community has to buy from those particular industries.

So, in fairness, for good economics and for a distribution of the cost as reflected by the responsibility, it makes some sense to have a broad-based tax in this bill.

Mr. MOORE. The gentleman is absolutely right. The feedstock tax is from the beginning of the process. It is in place now. We will have a waste end tax for those at the end who dispose of the waste, as the gentleman has described. That is in this bill, and I strongly support it. What we are talking about now is a broad-based tax in the middle, or on generation of the toxic waste and that is what Downey does not do and Duncan does.

Mr. DOWNEY of New York. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I think it might be fun if not instructive to talk a little bit about what my amendment does.

When the fathers of the Superfund bill, Mr. FLORIO in the House, Mr. GORE, then a member of the House, now an esteemed Member of the other body, started working on this legislation, along with others, they found a number of interesting things. They found orphan waste sites. At the orphan sites they could not always determine liability. Indeed at most of the sites around this country it was impossible to pin down who was in fact responsible for putting the pollutants in the ground or at the site.

So in terms of I guess what could be best called rough equity or rough justice, they determined the chemicals that were in the site. That is done scientifically, in such a way can be analyzed. And they worked backward; they said since in some instances we can determine liability, in those instances where we can, we will make the polluters pay. In the instances where we cannot determine liability, we will take the chemicals, the feedstocks—and understand that over the last 100 years or so, certainly in the last 30 or 40 where this problem has really been created—we will go back to the people who generated the feedstocks, the chemical feedstocks, and tax them.

Now, why did they do that? Well, they did that because there is obviously some correlation between the people who made the chemicals that were found in the ground and the people who put it there. And they also recognized that by taxing the chemical companies, the oil companies, they would be requiring that those costs be in turn passed on to their customers.

☐ 1245

So there were a number of economic principles that were made at the time that made sense in 1980, that make sense in 1984, that make sense today.

In 1984 we had a Superfund bill. It was prior to the election of 1984, and lo and behold, 323 of you, including the gentleman from Tennessee, including the gentleman from Louisiana, voted for a Superfund. Now what did they vote for in 1984? Interestingly enough, 1984 they voted for a $5 billion feedstock tax. They voted for a $2.7 billion crude oil tax. The reason they voted for those things was that they recognized in 1984, a connection between the people who were providing the polluting chemicals and the polluters, and they decided that they should be taxed.

What have we done since 1984? What we did in my amendment is we recognized this intrinsic link between the people who are shooting the toxic bullets into the ground—which, by the way, a quarter of them come from chemical and oil companies, but the other time that they are not shooting, they are providing the bullets—and we decided to tax them. We taxed them not at the $5 billion level that we did last year that you all voted for, but we reduced that to $2 billion. In part we reduced it because we recognized that the chemical industry had some difficulty and we wanted to be cognizant of that fact and deal with it.

We also decided that we would tax the oil industry because we felt as well, that keeping this connection between the people who produce the waste and the people who create some of the waste was important, and we taxed that at a $3 billion level. A little more than last year, but still and all a tax that does not unduly burden that industry.

The difference in the amount of money that was lost in 1984 and how we have made up for it in 1985 is a waste-end tax. Going after the people who actually generate the waste and taxing them for the production of these hazardous substances that they have created.

So we have preserved the connection, and to suggest otherwise I think is to fly in the face of reality.

Mr. MOORE. Mr. Chairman, will the gentleman yield?

Mr. DOWNEY of New York. I yield to the gentleman.

Mr. MOORE. I thank the gentleman for yielding. He and I worked together last year in the Ways and Means Committee in the closing hours on the tax section of that bill.

I think that the gentleman used my name or made reference to me a moment ago, and I want to explain why I voted for that bill last year. I did not vote for, except in the technical sense because that was in the bill, I did not vote for increasing that feedstock tax. That is the best we could get, and I was voting for the Superfund bill because we had to renew it and it is important to my State and the country to have it.

I did not like that tax one bit; it was an 11th-hour proposition right before the election. That is the best we could do. This is 1985. We are doing much better. We are coming back with a better bill. A more wisely thought out bill. We are coming out with a better way to tax.

Second, I would say in answer to the gentleman, that we have learned something since 1980 about who is responsible for waste. A lot of information came out of 301 studies by EPA since then. It is that information we are using today to say the responsibility for those taxes has to be broader than those who were taxed originally in 1980. We know now, as I said in debate yesterday, at the site in Indiana, some 200 companies were involved in that site and few of them were oil and gas companies or chemical companies. That is why we are looking at a tax like Duncan or a broad-based tax like the committee bill that gets at the generators of pollution in this country who aren't being touched by a waste-end tax or a feedstock tax.

Mr. DOWNEY of New York. Let me yield first to the gentleman from Oklahoma and then I want to engage the gentleman from Louisiana in a colloquy about the generators of waste versus the people who provided the bullets that were shot into the toxic waste sites.

I yield to the gentleman from Oklahoma [Mr. Jones].

Mr. JONES of Oklahoma. I thank the gentleman for yielding.

Mr. Chairman, when we took this bill up last year, we were operating very much by the seat of our pants as far as information was concerned. We did have information as to who was generating waste, and it did appear on the surface that it was mostly the oil and the chemical companies. The fact is, the decision should be made not on who is generating waste, but who is disposing of untreated waste. If you look at it from that standpoint, we do have new infomration, and in that connection, the oil and the chemical companies are only responsible for about 22.5 percent. I think that is where the nexus should be drawn.

Mr. DOWNEY of New York. On that point, let me not disagree with the gentleman but to suggest that there are so many sites in this country where we cannot determine who in fact put the chemicals in the ground that we now have to have some other formula to determine how we are going to pay to clean that up. The way that that has been decided to be done or was in 1980, would be to go back and find the people who were producing the bullets and tax them.

Now, it is imprecise, because we cannot tell who in fact put the chemicals in the ground, but we know that these 17 or 18 companies produce the chemicals that ultimately wound up in the ground; there is no argument about that. So I do not disagree with the gentleman that 25 percent of the people who are actually responsible for not only making the bullets but for firing them into the ground are now going to pay the tax. I am worried about all the sites where we cannot determine who has done the polluting. Who is going to pay for that?

I yield to the gentleman from Oklahoma [Mr. Jones].

Mr. JONES of Oklahoma. Again, looking at the new information from the EPA studies. As I recall, they studied about half of the 549 sites, and they found that there were 6,200 polluters or potential polluters. Now, only about 15 of those are from the oil and the chemical companies so there are a lot more who are potentially responsible parties than just the oil and gas companies.

Mr. DOWNEY of New York. Before I yield to the gentleman from Louisiana and the gentlewoman from Rhode Island, let me just quote from the same report that we are talking about. This is the "Feasibility and Desirability of Alternative Tax Systems for Superfund" done by the EPA, and I am quoting:

> Because [the chemical, petroleum and metal processing] industries both produce and use the feedstocks taxed by the current CERCLA Superfund tax, it appears that the tax burden is primarily borne by these industries and their customers. This is consistent with the view that equity requires a rough correlation between the industries paying the Superfund tax and the industries responsible for the fund spending.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. DOWNEY of New York. I yield to the gentleman.

Mr. TAUZIN. I think it is important in a discussion of this tax section to distinguish between the parties who are responsible for a given site and those that are not necessarily responsible for a given site. Where you can find a responsible party, the person has actually contributed to a site, there are provisions in the bill to attach liability to that responsible party. But it is also important that when you look at the spectrum of responsible parties, you examine whether or not they are also being taxed for those sites for which you cannot find responsible parties.

Now, when we looked at New York sites, to be specific since the gentleman respresents New York State, we found from EPA's list that there were 135 potentially responsible parties involved in the Superfund sites in the State of New York that had been listed. Of that list, only 16 percent were chemical companies. Eighty-four percent of the responsible parties who contributed to those sites lie outside the chemical industry and would be untaxed under your proposal. Now my concern is and the reason I asked to be yielded to, was that if we know as much as 80 percent of the responsible parties at given sites are currently going untaxed for the orphan sites, should we not develop a plan that attaches some liability on that group of individuals in light of the equity arguments that you make. They are probably also responsible for the other sites; we simply cannot locate them all.

Mr. DOWNEY of New York. Let me just say this to the gentleman; I think he makes a reasonable point. The vast majority of these sites, we cannot determine who is responsible, but we can determine and do in fact know what chemicals are in the ground there. That we have done by scientific analysis. What we do is we step backward from that point and we say, "Well, we know the chemicals, we know pretty much who is responsible for the production of the chemicals, we are now going to make those people who had a connection, maybe not as precise as the gentleman would like, to the production of these hazardous wastes, pay for that cleanup. That is the first point.

As for the second gentleman's point that in the future we should make the people who are generating the waste pay the tax, that is what the waste-end tax does. And therein lies its beauty and effectiveness.

□ 1255

Mr. TAUZIN. Mr. Chairman, will the gentleman yield further?

Mr. DOWNEY of New York. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, the gentleman's argument that the person who benefited financially from the sale of products that ended up in the waste stream ought to bear the responsibility of paying for those cleanups where we cannot find responsible parties is a good one.

Mr. DOWNEY of New York. Yes.

Mr. TAUZIN. However, let me point out to the gentleman that the parties who benefited from the products that contributed to the waste stream were not simply the original generators of chemical products; they were the downstream generators of manufactured goods who also benefited. To say now that we are going to take only one group of those beneficiaries, the chemical group, and tax them exclusively and exclude all those other manufacturers who benefited from making profits off those products that ended up in the waste stream is a bit unfair, in my view, particularly when, under the current tax scheme which the gentleman's tax proposal would enlarge upon, only 12 companies are now paying 70 percent of the Superfund tax.

That seems to me to be almost a confiscatory demand upon 12 companies in the United States when many other beneficiaries are out there who ought to be paying something.

Mr. DOWNEY of New York. Mr. Chairman, let me address some of the gentleman's points, because they are good ones.

First of all, when we take a look at the chemical feedstock component of either the Duncan proposal or mine, there is very little difference, and I think that that difference has been reflected in the points the gentleman from Louisiana and the gentleman from Oklahoma have made over the years, that we should try to develop a closer nexus between the problem and who pays.

As a result of that, from the 1984 bill we have gone down from $5 billion to $2 billion on feedstocks, and the Duncan proposal is $1.5 billion on feedstocks, and my proposal is $2 billion on feedstocks. So the difference between the two of us is $500 million, or $100 million a year, and I think in all fairness to this important and large industry, that that is not a whole lot of difference.

The CHAIRMAN. The Chair would simply like to interrupt at this time to advise the gentleman that he has approximately 2 minutes remaining of his time.

Mr. DOWNEY of New York. Mr. Chairman, it is hard to believe, when you are having fun, that time goes so quickly.

Mr. Chairman, I yield 1 minute of my time to the gentlewoman from Rhode Island [Mrs. SCHNEIDER].

Mrs. SCHNEIDER. Mr. Chairman, I just want to reiterate what my colleague was saying, and to make it very clear that we have gotten off the point of this discussion, that it is really an issue of another half a billion dollars, and that in fact both the Frenzel-Downey proposal and the Duncan proposal are calling for a feedstock, but what we have to keep in mind is that the Treasury report indicated that 75 percent of the various pollutants can be traced back to the feedstock. We have a feedstock in Superfund now. It is not a new idea, it is not a concept; all we are talking about is the variation of the amount of dollars, and I think that what we need to do is to shift this discussion or debate onto the value-added tax and to recognize that what we would be doing in supporting the Duncan proposal or the committee's proposal would be an unprecedented step toward movement of a national value-added tax.

Mr. DUNCAN. Mr. Chairman, I yield 4 minutes to the gentleman from Illinois [Mr. CRANE].

Mr. CRANE. Mr. Chairman, I rise in support of the amendment, although I do that with some very serious reservations.

The serious reservation I have is attempting to spread the burden of the toxic cleanup to anyone but individuals, and for that reason, the general revenue feature of the amendment of the gentleman from Tennessee [Mr. DUNCAN], is to me its most redeeming quality.

The fact of the matter is we have laws on the books right now to deal with those people who are so-called midnight dumpers. The midnight dumpers get penalized very severely if they are found to be distributing toxic wastes unlawfully. In addition to that, we have also determined by law that those people who produce toxic waste as a byproduct have to absorb the responsibility of disposing of that toxic waste and assume the costs involved therein. Dow Chemical, for example, is a company that has made very remarkable strides in recycling its own toxic-waste byproducts. About 97 to 98 percent of Dow's toxic wastes are recycled, reused, otherwise treated, or incinerated. But Dow has to absorb the burden of disposing of those that they cannot recycle, and we should be commending those companies that do that.

I think the important thing for everyone to keep in mind is that the revolution in chemical products, especially the petrochemical revolution, is a phenomenon of our lifetimes. It is essentially a World War II post-World War II phenomenon. It has improved the quality of our lives in ways undreamed of by most of us. I remember during the 1973 oil embargo we had a debate on the determination of what portion of a barrel of oil would be allocated for the petrochemical industry. We had a fellow from my district who was in the petrochemical industry, and he came down to explain to Members the importance of petrochemicals. To illustrate the importance, he had depicted a woman working in her kitchen. Then he started to take the petrochemical derivatives out of the picture. Her dress went; she finally was unclad totally because all of the clothes on that woman were derivatives of petrochemicals. Her shoes were gone, her cosmetics were gone, the countertop was gone, the tiling on the floor was gone, and certain utensils in the picture disappeared as well.

The point I am trying to emphasize is that everything from the clothes on our backs to the carpeting on the floor to the membership voting cards we use in this Chamber are petrochemical derivatives.

We all enormously benefit from this use of petrochemicals, and when the gentleman from New York suggests that individuals did not cause the problem he is wrong; it is precisely individuals who cause the problem by demanding such products. These companies did not create products that were unwanted, they created products that Americans and the world wanted and have greatly contributed to man's material welfare.

That being the case, the only responsible parties who should be picking up the tab on any Superfund financing are individual taxpayers. The individual citizen in this country is in fact the culpable party. We are talking about orphan sites where we cannot identify the person who contributed directly to it.

Now, when you want to put an additional tax on business, that is a cost of production to business. Those businesses have to figure out how to absorb that cost of production and pass it back onto you and me as consumers in the form of higher prices. Some can absorb that cost and still show a fair return on investment. U.S. businesses are already at a competitive disadvantage due largely to the high domestic cost of capital and of environmental regulation. I think it is important for us not to add anything more to the burdens of already overburdened businesses. If American citizens have made the determination, and properly so, that they want to clean up waste, let them pay for that decision. The best way to do that is by funding it entirely through general revenues, and for that reason I support the amendment offered by the gentleman from Tennessee.

The CHAIRMAN. The Chair wishes to state that the gentleman from Tennessee [Mr. Duncan] has 7½ minutes remaining and the gentleman from New York [Mr. Downey] has 1½ minutes remaining.

Mr. DOWNEY of New York. Mr. Chairman, I yield 15 seconds to the gentleman from Georgia [Mr. Fowler].

(Mr. FOWLER asked and was given permission to revise and extend his remarks.)

Mr. FOWLER. Mr. Chairman, I rise in opposition to the Downey amendment and the Duncan amendment and in support of the Ways and Means Committee bill.

Mr. Chairman, this Nation currently faces a plethora of problems. Yet few are more important than the need to clean up the abandoned hazardous waste sites that deface our country. That is why the Superfund law, passed 5 years ago to attack this problem but whose funding authority expired last September 30, must be renewed and expanded.

The question is: At a time of continuing budget deficits, how should an expanded cleanup be paid for? Here we are dealing with a difficult national problem—but not an impossible one.

The best solution is the Superfund excise tax. Adopted overwhelmingly in the other body in September and approved by the House Ways and Means Committee in October, the Superfund excise tax best meets the important criteria for a broad-base tax which ensures that "the polluter pays."

Three major points should be emphasized about the SET:

It is fair. It reflects the principle that "the polluter should pay." We all believe in fairness. However, under the original Superfund, two industries—petroleum and chemicals—have paid more than 95 percent of the feedstock taxes that have financed the bulk of the program. One does not have to be a partisan of either of those industries to recognize that this is patently unfair.

When all is said and done, the abandoned or orphaned hazardous waste sites that plague our countryside, and which Superfund was designed to clean up, are a national problem. Some of the wastes have been traced back as far as the 19th century, deposited by firms that have long since disappeared. Products and services produced with those waste as byproducts have been used by every American. In short, what we are facing is the belated recognition of the price of our industrial society. We and are

forebears have all been polluters in the sense that we have accepted the benefits of the processes that produced these wastes while—until recently—ignoring their adequate disposal.

More specifically, the Environmental Protection Agency has identified more than 4,000 business, Government, and other entities as potential polluters at Superfund sites. Having been identified, the nongovernmental entitles—governments are exempt—are expected to clean up their wastes, as Superfund money is used primarily for abandoned hazardous waste. The point is, the companies identified represent the broadest cross section of business and industry. There is no reason to believe that polluters of the past, who have since vanished, were any less representative of American industrial society.

Were it not for the deficit, the most equitable way to finance cleanup would be general revenues. But, given our current budget realities, the next-fairest way is a broad-base tax such as the SET. Moreover, it should be pointed out that under the SET, the chemical and petroleum industries would continue paying feedstock taxes. Under the Ways and Means plan these taxes would be increased by $1 billion over current law, and the chemical and petroleum industries would also be paying their share of the SET.

The SET would not raise the cost of U.S. exports and would not worsen our trade deficit. This is a critical distinction between the SET and alternative funding proposals. The SET tax would be rebated on U.S. exports and imposed on imports. Thus, whereas the SET is trade neutral by its very nature, the other proposals all require that some mechanism for achieving trade neutrality be grafted onto them. Thus, none of the alternative proposals identified to date would achieve import/export neutrality as efficiently as SET.

Furthermore, any attempt to fashion such provisions in relation to alternative proposals would create two serious problems: First, it would raise issues over the legality of such taxes under the General Agreement of Tariffs and Trade; and second, it would significantly increase the complexity of any such tax.

The SET is not a value-added tax. The SET would be imposed only on manufacturers and importers in contrast to a VAT which is usually—as in some European countries—imposed throughout the production and distribution chain. The SET would apply only to sales of tangible personal property in contrast to a VAT, which generally applies to all sales and services. Unlike a VAT, the SET would be applied to a specific area of the economy—manufacturing sales—for a specific and limited purpose. It is an excise tax similar to the literally dozens of excise taxes in the United States Code.

As for the contention by some that the SET could be used as a precedent for similar taxes to fund other programs in the future, this same conclusion could be drawn about alternative proposals. Waste end taxes, corporate surcharges based on business activities—all are new taxes. And Congress, after all, has the responsibility for determining the purposes for which tax revenues of any kind are dedicated.

What would the Superfund excise tax do? Although set at a rate of less than a tenth of a penny per dollar of manufacturers sales, it would raise nearly $5 billion—in the Ways and Means Committee bill—over 5 years to help finance an expanded cleanup. It would provide an equitable funding base for Superfund without creating new problems for American business. And it would do so without creating new economic burdens for consumers. Calculations show that the SET would add about one-tenth of a cent to the price of a box of soap or $6 to the price of a midsize American sedan.

None of us—Members of Congress, businessmen or any other American—can duck responsibility for reaching a meeting of minds so that we can clean up our country. For our children and their children, we can make progress toward a healthy America. That job must be done effectively, responsibly, and fairly. As Edmund Burke said: "What morality requires, true statesmanship should accept."

Mr. DUNCAN. Mr. Chairman, I yield 1½ minutes to the gentleman from Minnesota [Mr. FRENZEL].

(Mr. FRENZEL asked and was given permission to revise and extend his remarks.)

Mr. FRENZEL. Mr. Chairman, I am, of course, a supporter of the Downey-Frenzel amendment and hope that it is the final prevailing financing scheme. I do want to say, however, that the Duncan amendment is a good one in that the author has tried to give this body a choice between the two schemes that otherwise would have been available to it. The Duncan amendment has the advantage of not including the sales tax, which is the feature that I find most odious in the committee bill.

When we vote on Tuesday, the first vote will be on the Duncan amendment. In my judgment, that is a vote between Duncan and the committee. Duncan being clearly superior, it deserves our vote at that time. I hope, of course, that the Downey-Frenzel amendment will ultimately prevail, but I urge a vote for the Duncan amendment.

☐ 1305

Mr. DUNCAN. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. FIELDS].

(Mr. FIELDS asked and was given permission to revise and extend his remarks.)

Mr. FIELDS. Mr. Chairman, I support the Duncan amendment for two basic reasons.

First of all the Duncan amendment provides a tax mechanism to collect the full $10 billion authorized under this legislation, yet it would allow that $10 billion to be collected if we discover that the full amount is not needed or cannot be expended effectively in the next 5 years.

The Environmental Protection Agency has stated before my committee in testimony that it can only effectively use $5.3 billion over the next 5 years. While I believe that more than $5 billion can be well spent, I am certain that $10 billion can be well spent.

The Duncan amendment recognizes that we in Congress do not know exactly how much money the Superfund will require over the next 5 years and provides what I think is much needed flexibility.

The Duncan amendment also spreads the tax burden among industry responsible for the historic generation of hazardous wastes. Currently 12 companies pay approximately 70 percent of the Superfund taxes to clean up abandoned hazardous waste sites in this country, while there have been 4,000 companies who have been recognized who actually add to the waste problem of this country.

The Wall Street firm of Kidder, Peabody & Co. concluded in a study done of 500 potentially responsible parties at hazardous waste sites that no company or group of companies appears to dominate the list of potentially responsible parties, and as we expected, a broad spectrum of U.S. industry is involved; but if you look at the status of the petrochemical industry now, there is cause for alarm if a heavy tax is placed on that one industry. The industry's positive trade balance declined from $14 billion in 1981 to $10.3 billion in 1984.

Under the Downey proposal, there is a 1,500-percent increase in the crude oil tax under that particular proposal.

Now, 119 of the 315 domestic refineries that were in operation at the beginning of 1981 have been shut down.

Employment in the U.S. petroleum refining industry has fallen by more than 30,000 workers between 1981 and 1984.

For those reasons, Mr. Chairman, I support the Duncan proposal.

Mr. DUNCAN. Mr. Chairman, I yield 3 minutes to the gentleman from Pennsylvania [Mr. RITTER].

Mr. RITTER. Mr. Chairman, I thank the gentleman for yielding.

We have a misunderstanding here. I think we should clear it up as soon as possible, and that is the difference between generation of hazardous substances and the disposal of hazardous substances.

Now, it may be that certain industries generate a large amount with respect to certain other industries, but it may be that those industries that generate take good care in disposal, such that these wastes do not end up in Superfund sites, or more importantly, have not ended up in Superfund sites.

Now, if we look at it that way, if we look at disposal as the key item, we will find that the universe of responsible parties or potentially responsible parties is so much larger than the few companies that will be focused on for either the feedstock increase or the vast multibillion-dollar tax on gasoline or the waste-end tax.

The EPA had a booklet where 4,000 potentially responsible parties were identified in a new booklet, Superfund Update, some 9,000 potentially responsible parties are identified. These potentially responsible parties have disposed of the wastes in the Superfund sites.

You can go through lists of virtually every manufacturing area, like aerospace and aircraft, automobiles, electronics, electrical, furniture companies and funeral organizations and retail chains and real estate and utilities and foods, beverages and groceries, airlines and Government agencies and universities and computer companies, and find potentially responsible parties.

Now, in the name of fairness, but also in the name of apportioning this tax in an economically viable fashion that does not put out of business U.S. manufacturers, that does not export those jobs, that does not discriminate against our basic industries, which are having great trouble in surviving, I urge my colleagues to consider some form, whether it be in the Duncan amendment or in the committee bill, of a broad-based tax.

Mr. DOWNEY of New York. Mr. Chairman, if the gentlewoman from Rhode Island would like to address the committee, I will yield the gentlewoman the last 1½ minutes that I have remaining.

Mrs. SCHNEIDER. That is a very short period of time.

Mr. DOWNEY of New York. I know. I yield the gentlewoman the balance of my time and I will be happy to yield more extensively to the gentlewoman when my time is up.

Mr. DUNCAN. Mr. Chairman, the gentlewoman can have the remaining 1¼ minutes on my side.

Mrs. SCHNEIDER. Mr. Chairman, the gentleman is most generous.

The CHAIRMAN. The gentlewoman apparently is going to close debate for both sides. The gentlewoman is recognized for purposes of doing just that.

Mrs. SCHNEIDER. Mr. Chairman, if I am going to close out the debate for both sides, it is quite obvious that I must be fair and equitable in my comments for both sides. So I would like to address my colleagues and share with them my wholehearted enthusiasm and support of the Frenzel-Downey amendment.

I am quite concerned that if we are to do anything but support——

Mr. JONES of Oklahoma. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHNEIDER. Yes, I yield to the gentleman from Oklahoma.

Mr. JONES of Oklahoma. I hope the gentlewoman from Oklahoma will try to remain fair and equitable now.

Mrs. SCHNEIDER. Most certainly. My specific details will make it quite clear that this is a most fair and equitable approach to the Superfund financing mechanism.

Let me share with you that if we are to support either one of the other options, we will be turning the corner on our first national value-added tax. It concerns me, because my colleagues earlier in the debate were indicating that they were not having the benefit of last year's decision in 1984 and saying that, well, we were operating by the seat of our pants. I think to support either one of the other options, most certainly not having had hearings on the value-added tax or consulting with our constituents, we would be making a sure mistake.

This is one of the rare occasions that we have today in support, by gaining the support of the majority of not only the business community, but also labor and public interest groups who are absolutely united on this one issue. I think that has something to tell us about the Ways and Means Committee proposal. It is a very small but powerful sector of the economy that is trying to get out of I believe the responsibility for their fair share.

I am quite aware that the gentleman from Minnesota [Mr. FRENZEL] and the gentleman from New York [Mr. DOWNEY] have put unmeasured hours into carefully crafting an amendment that would be the most fair to the various courses of action that we are discussing. I think it is important to know that insofar as jobs are concerned, which has been a comment earlier mentioned here, that the Frenzel-Downey amendment will not destroy jobs, as some have been claiming. Certainly the AFL-CIO would not be supporting it if it did; but the chemical industry is healthier now than it ever has been. A 1985 Commerce Department prediction is that growth of the chemical industry will be higher than the rest of the economy. Industry earnings for the first half of 1984 were up 59 percent from the first half of 1983.

My colleague, the gentleman from Illinois [Mr. CRANE], who had mentioned his concern about the balance of trade, petrochemical exports reached an all-time high of $13.8 billion in 1984; however, the level of taxation of the Frenzel-Downey amendment proposal can be handled very easily, especially since the chemical industry's average tax rate over the last 3 years has been a mere 3.6 percent.

Finally, let me conclude by saying that as we look further at the trade situation, a petroleum-based tax would apply both to domestic and imported oil products. It would not affect our balance of trade problems. As a matter of fact, if you look at the chart at the end here, it shows very clearly that State oil severance taxes are many times higher than the proposed tax in different States. For example, in Alaska it is $4.05 as compared to the Frenzel-Downey amendment, which calls for 11.9 cents.

So in conclusion, let me say that we have the opportunity to support a very fair and responsible funding mechanism to address the toxic waste problem. What we need to maintain is the ideology and the philosophy indicating that the polluters must pay, not society as a whole.

The CHAIRMAN. Pursuant to the unanimous consent request that we had earlier in the day, we will now proceed to 45 minutes of debate on the Downey-Frenzel amendment, this having concluded the debate on the Duncan amendment.

The Downey-Frenzel amendment will not be offered at this time and the balance of 15 minutes will be reserved for debate on Tuesday.

The gentleman from New York [Mr. DOWNEY] will be recognized for 22½ minutes as a proponent of his amendment and the gentleman from Tennessee [Mr. DUNCAN] will be recognized for 22½ minutes as an opponent to the Downey-Frenzel amendment.

The Chair recognizes the gentleman from New York [Mr. DOWNEY].

Mr. DOWNEY of New York. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, there are rare opportunities in this Chamber where I could be on the side of the Heritage Foundation and find that Human Events has an editorial in substantial agreement with the position I have taken. But this unlikely combination of people is the result of the ardent, unyielding, and in my opinion visionary opposition to the value-added tax, national sales tax, excise tax, depending on what you would like to call it, that is contained in the committee amendment.

We offer a responsible alternative. I have already laid out the fact that we have a combination of taxes on chemical feedstocks and crude oil, 9 waste-end tax, a trust fund for leaky underground storage tanks, a component for general revenue, all totaling some $10 billion, a 5-year program to try to deal with the toxic waste sites that dot this country's landscape, that threaten our people and that need to be cleaned up.

I do not want to dwell on that because others will talk about that. What I would like to talk about for a moment is the idea of a national sales tax as a mechanism for financing the Superfund.

The gentleman from Oregon [Mr. SMITH] will talk probably on Tuesday about his election to the House of Representatives. It was in part possible because the then chairman of the Ways and Means Committee, Mr. Ullman, had talked about a value-added tax as a way of solving some of this country's deficit problems. People in Oregon, who have always been opposed to value-added taxes, most recently voted 4 to 1 against them, sent Mr. SMITH to Congress because they were concerned about Mr. Ullman's position on the value-added tax. So for those of you who want to be in the vanguard of the national sales tax, there is bad and dangerous history to be watched very carefully by you.

Second, when I laid out somewhat earlier this afternoon, I know once again to the attentive ears of my colleagues, the lessons that the gentlewoman from Rhode Island gave us about how to assess the tax, is it effective, is it fair, we find that the Ways and Means proposal is neither of those things. It is not an effective tax, because as the Treasury Department has pointed out, a vertically integrated company under the Ways and Means proposal will find ample ways to try to avoid the sales tax.

There is no limit to the creativity of a tax lawyer or financial officer of a company to avoid a tax and this value-added tax, national sales tax, will not pose very much of a problem to the people who want to avoid it, so it is not particularly effective.

It once again severs the connection between the people who are responsible for the problem and the people who will pay. That has been amply demonstrated by the Department of the Treasury and by the EPA.

I think the last point I want to make is that this entire tax process, the Internal Revenue Code of our country started out as a 15- or 16-page document. It has grown substantially in the 70-odd years that it has existed, with exceptions and deletions, itemizations and exceptions.

The value-added tax that is in the Ways and Means bill will start off as a narrowly focused attempt to deal with the specific problem and it will grow inexorably.

Now is the time to kill it. The Frenzel-Downey amendment does that and it does it fairly.

So, my colleagues, be aware of this evil that is lurking in the Ways and Means bill and let us finish it off while the time is right.

Mr. DUNCAN. Mr. Chairman, I yield 5 minutes to the gentleman from Minnesota [Mr. FRENZEL].

(Mr. FRENZEL asked and was given permission to revise and extend his remarks.)

☐ 1320

Mr. FRENZEL. I thank the gentleman for yielding this time to me.

Mr. Chairman, first I would like to thank the sponsor of this amendment, the gentleman from New York [Mr. DOWNEY], for his good work in assembling this amendment, and to observe that when you have two points as far removed from one another on the political spectrum as the gentleman from New York and myself, it presents an interesting range of sponsorship.

I notice that there are also at the table lists of other people who are supporting our amendment, which seem to run the alphabet from alpha to sizzard and present astounding diversity.

Everybody in this Congress likes the Superfund. It gives us the chance to be forthrightly against toxic waste, and that is a pretty safe position. It gives us the chance to stand foursquare for cleanliness, and that is a heroic position. All of us like to be both heroic and safe whenever it is possible.

The trouble is that we are to that section of the bill where it is a little hard to be both heroic and safe. That is the financing section. We have to find $10 billion, or maybe $7.5 billion if we eventually go to the program of the other body. We have been given three options.

The first is the Duncan amendment, which we have just debated. The second is the Downey-Frenzel amendment, which we are talking about now. The third is the committee bill, also known as the value-added tax or the antional sales tax. Each of them has some disadvantages.

The committee bill, in my judgment, is probably the least popular. Most Members are going to find it hard to snuggle up to a sales tax. Most Members are going to be nervous about hitching a vital program like the Superfund to an uncertain and probably unreliable funding source. And most Members are not going to like the ease with which a VAT or sales tax can be escalated before the people know it, that is, the consumers, actually know what has been done to them.

The Duncan amendment has some problems, too. It avoids the unknown horror of the sales tax, but it comes up a bit short on the revenue side and it has an uncertain tax of its own which comes in a little late in the scheme of things.

The Downey-Frenzel amendment, based on the linking of the financing to the industries which use the materials in question, is pretty hard on those industries. Members with petrochemical plants, oil and gas industries, are going to find our amendment pretty harsh.

In short, none of those financing plans is perfect. Maybe they are not even very good. But we have to fund the Superfund. For me, the choice is easy. The sales tax is simply, patently, obviously and everlastingly unacceptable. The Duncan alternative is better, but uncertain. The Downey-Frenzel amendment, for all of its imperfections, is clearly preferable.

Committee members who adopted that sales tax financing by the overwhelming vote of 18 to 17 are going to argue that it is neither a value-added tax nor a sales tax. They will find subtle distinctions. But our constituents, the consumers of America, are not going to be able to find those distinctions. They are going to say it is a distinction without a difference. They are going to call it a sales tax because that is what it seems to them and that is what it is.

If the House accepts this sales tax on Tuesday, the country is certainly going to get that sales tax because the other body has already approved one. I think the other body would like to get its vote back, but if this body takes the Ways and Means recommendation, there will be no way to avoid that sales tax within the perimeters of the conference.

So if Members of this House oppose a national sales tax or a value-added tax, either on the basis of its merits or demerits, or because there have been no hearings in this House, because there has been insufficient national debate and discussion on it, then this is the last chance they have.

If you believe, as I do, that the country does not need a sales tax at this time or is not ready because of the insufficient discussion, I urge Members of this body to join me in voting for the Downey-Frenzel amendment and in voting down the committee system of financing.

Mr. DOWNEY of New York. Mr. Chairman, I yield 4 minutes to the gentleman from Massachusetts [Mr. DONNELLY], a member of the committee.

(Mr. DONNELLY asked and was given permission to revise and extend his remarks.)

Mr. DONNELLY. I thank the gentleman for yielding this time to me.

Mr. chairman, 5 years ago, our best estimates of the scope of the toxic waste crisis confronting America's communities were entirely too optimistic. If anything has been accomplished in the last 5 years of Superfund, we have been educated to the reality that we have far to go before the people we represent are freed from the ominous threat of abandoned toxic waste dumps. Those dumps threaten vital drinking water supplies. They present a very real danger to the health and property of the families that live near them. Only 6 of the 812 sites on the EPA's national priority list have been taken off the list. One of those six has been placed back on the list because it has reactivated. EPA expects to double the number of sites on the national priority list in the next 2 years. GAO tells us that estimate is overoptimistic. GAO projects that there are at least 4,000 sites that merit Superfund cleanup.

This critical program has far to go before its goal is realized. The longer it takes to permanently and safely clean up a toxic waste site, the more likelihood that the contaminants will imbed themselves deeper and deeper into the ground, and spread into ground water supplies. The longer the delay, the greater the eventual cleanup costs. We owe it to the American people to speed up the Superfund Program, and to insure that the program has adequate resources. The Downey-Frenzel amendment is the best way to insure a $10 billion Superfund Program for the next 5 years. It is the most appropriate and rational financing amendment before us today. Downey-Frenzel merits your support. It deserves your vote.

Five years ago, Congress decided on a philosophy to govern the financing of the newly created Superfund Program. The taxpayers were not asked to pay a significant share of the costs of the program. General revenues were authorized to pay approximately 12½ percent of the program costs. Families in my district, and families in your districts are not the parties who dumped toxic wastes in the middle of their communities.

Our constituents are the victims of decades of ignorant, and unfortunately negligent, handling and disposal of hazardous wastes by industry. The individuals and companies responsible for creating the need for Superfund have, to the major extent, failed to identify themselves, or cooperate in good faith with Government agencies working to remedy the threats posed by abandoned toxic waste dumps.

Five years ago, Congress imposed Superfund taxes on 42 basic chemical substances and on petroleum. Those targeted taxes have paid for about three-quarters of the costs on the Federal Superfund Program. The chemicals taxed are the basic "building blocks" from which many of the 63,000 commercially available industrial chemicals are derived. The feedstocks are hazardous or their derivatives are hazardous. Tax was imposed on domestic crude and imported crude and product because petroleum is the ultimate "building block" for all 11 organic chemical feedstocks.

EPA still concludes that the existing method of assessing Superfund taxes on the major, hazardous waste-generating industries: Chemical, oil, and metal-related industries, is justifiable. A recent report by EPA stated that, "This is consistent with the view that equity requires a rough correlation between the industries paying the tax and the industries responsible for Superfund spending."

The Downey-Frenzel amendment remains consistent with the philosophy that has governed the financing of the Superfund Program. Industries which produce most hazardous substances should still pay most of the costs of the program. This system is not perfect. We do not claim that it is. After close scrutiny, however, the Downey-Frenzel amendment cleary offers the most rational and consistent approach to financing Superfund's next critical 5 years.

Downey-Frenzel responds to the legitimate criticism that industries other than the oil, chemical, and metal-related industry groups have dumped toxic wastes, and they too should be taxed under Superfund. Downey-Frenzel would implement a significant new tax on the disposal and land management of hazardous waste. The new waste-end tax will collect taxes from all parties which dispose of hazardous waste, regardless of their industry group affiliation. In doing so, the new waste-end tax broadens the pool of Superfund taxpayers, and it also serves a valid environmental purpose.

It will provide a potent incentive for waste volume reduction, and for more environmentally sound waste management techniques. Unlike the Superfund value-added tax on all manufacturers, the new waste-end tax broadens the taxpayers base and accomplishes a desirable policy goal. The Superfund VAT is a smokescreen which hits all manufacturing industries regardless of whether or not an industry has contributed to the toxic waste crisis. The VAT accomplishes no environmental purpose. Instead, it divorces the Superfund tax system from the industry products and practices which created the need for the Superfund Program.

Downey-Frenzel will provide $10 billion in real money for Superfund's critical next 5 years. Its taxes are upfront. Its taxes will be imposed, as they are now, on the industrial products and practices that precipitated the public health and environmental crisis America's communities face today.

Downey-Frenzel tells us who and what is going to be taxed for the dedicated purpose of financing Superfund cleanups. It was claimed during yesterday's debate that Downey-Frenzel is a tax that will impact consumers unfairly because oil and chemical companies will pass along the costs of the Superfund taxes. Having reviewed the record of these industries, we see that they have almost always been able to distribute taxes and costs imposed on them among their customers. Certainly, this pass-along will occur to the maximum extent possible. I argue, however, that the American consumer would much prefer the extremely-minimal product cost increase that might result from Downey-Frenzel on a narrow range of items, than a hidden tax on almost every nonfood product they buy.

Dedicated Superfund taxes on substances that are the basic building blocks for toxic wastes. They will not appreciate or understand the wisdom behind a hidden tax on all manufactured goods, from new cars to swingsets for their children.

Your vote on the Downey-Frenzel amendment is as important to the strength of the Superfund Program as were yesterday's and today's earlier votes on key program management issues. Downey-Frenzel is upfront, it remains true to the "polluter pays" philosophy that has guided our Nation's environmental statutes, It deserves your vote today.

Let me just say in conclusion, Mr. Chairman, when we return next Tuesday to debate the tax policy decision, I would hope that the Members of this institution would take a close look at the three options that they face, an option either of continuing present good tax policy, or an option of taking the broad leap either into a VAT tax or a national excise tax.

I would think that the options are very clear. We have to continue present policy.

Mr. DUNCAN. Mr. Chairman, I yield 3 minutes to the gentlewoman from Rhode Island [Mrs. SCHNEIDER].

(Mrs. SCHNEIDER asked and was given permission to revise and extend her remarks.)

Mrs. SCHNEIDER. I thank the gentleman for yielding this time to me.

Mr. Chairman, I would just like to add a few footnotes, anticipating that I may not have the opportunity to speak on Tuesday. I would like to put forward a few arguments I have already heard in the halls among the lobbyists and others, and that is that part of the proposal of the Downey-Frenzel amendment might raise the fuel bills and make us more heavily dependent on foreign oil.

I would like to make it very clear that as a Representative from one of the States that has the highest oil bills in the country, and representing and knowing the energy situation in the Northeast-Midwest, I would highly encourage all of my Frost Belt colleagues to look very, very closely at the Downey-Frenzel proposal; that this particular petroleum-based portion of the Downey-Frenzel proposal will be spread so widely that its total effect will be negligible.

The other point that I would like to emphasize is that the petroleum-based tax would apply to both domestic and imported oil products, and I think that is important to keep in mind.

But as we are discussing the whole proposal, the most controversial element of the entire bill, I believe, is the value-added tax. Just to pick up on some of the points my colleague from

New York was making, if we are to establish the value-added tax as the precedent for future taxes, we ought to be looking at the history of Europe.

In Europe, where they have already had an ongoing value-added tax, we can see that in Sweden the increase over the past few years has been 90 percent. In Denmark, the value-added tax has increased 120 percent, and England's increase has been 50 percent.

So I maintain that once we begin this snowball rolling of a value-added tax, we can only be assured that eventually it will lead to an avalanche. So with these remarks, Mr. Chairman, I conclude and urge my colleagues to wholeheartedly support the Downey-Frenzel amendment.

☐ 1330

Mr. DOWNEY of New York. Mr. Chairman, I am happy to yield a little of my time to the gentleman from Austin, TX [Mr. PICKLE], who will speak on the wrong side, but I yield 3 minutes to the gentleman from Texas.

Mr. PICKLE. Mr. Chairman, will the gentleman from Tennessee [Mr. DUNCAN] also give me 2 minutes?

Mr. DUNCAN. Mr. Chairman, I am glad to yield 2 minutes to the gentleman from Texas.

The CHAIRMAN. The gentleman from Texas [Mr. PICKLE] is recognized for 5 minutes.

(Mr. PICKLE asked and was given permission to revise and extend his remarks.)

Mr. PICKLE. Mr. Chairman, the real question here is who is going to pay for the cost involved. I think we are all agreed that we should renew the fund, but we ought to be fair about how we fund it.

The bill advanced by the Committee on Ways and Means, in my judgment, is the fair and the equitable way. It is not something that we just dreamed up all at once and pushed out here to get a quick vote. The Ways and Means Committee approved it, the Energy and Commerce Committee approved it, and the Public Works and Transportation Committee approved it. It is a broad-based tax because it is not any little, one-section-of-the-country kind of slip-by form of financing for Superfund. It is a broad-based excise tax supported by the three major committees concerned with this matter, and we ought to keep that in mind.

I hear the gentleman from New York tell me that he is not unfair to the oil industry or the chemical industry, and I would like to believe that he wants to be a friend of the industry, but when I hear him say that, the figures that we must produce belie that position.

I want to try to lay out some facts and figures here. I think the gentleman from Oklahoma [Mr. JONES] is going to lay this out in more detail, but let me take just one little example here. Let us take the oil companies. I am from Texas and I am interested in that, and I happen to pick on that one industry for an example.

According to EPA data, we show that the responsibility for 4.5 percent of waste found at all NPL sites can be attributed to the oil companies, and yet the tax burden under the current law is that the oil companies must pay for 16 percent of all taxes funding the Superfund.

Now, as you go to the Ways and Means Committee, we increase that burden to 23 percent. The gentleman from New York [Mr. DOWNEY] and the gentleman from Minnesota [Mr. FRENZEL] would increase that tax burden to some 42.89 percent. That unfair burden is from a 15-fold increase in the crude oil tax over current law. That is no small increase.

In all of these efforts to say you are going to spread out the burden, I say the spread looks like a sledgehammer against the oil companies in that one field, from 16 percent up to 42.89 percent.

Now how do you do that? Let us go back and check some different figures. Let us take crude oil.

Under the current law, the tax now is 0.79 cents per barrel. That is it, 0.79 cents per barrel, a little less than a penny.

Under the Ways and Means Committee, we increase that to 3.8 cents per barrel, so the allegation that we are trying to prevent the oil companies from paying their just portion of these clean-up sites, is simply not factual. It is an increase of over four times current law. Oil companies are not only meeting their obligations, they are adding to them, and they have been much more responsible than all other industries.

What does the Downey-Frenzel amendment do? It increases it 12 cents per barrel, 12 cents. That means there is a 15-fold increase on the tax per barrel. Do you hear me?

When you talk about cost of fuel in New England, and you go down to heat the homes in New England or buy gasoline in Delware, we are going to say that you are going to pay 12 cents per gallon more at the pump for gasoline or for heating fuel.

Now you might say that might be a little bit technically incorrect because your 12 cents is at the refining point, but I am no more incorrect on that, my good friend, than is the gentleman from New York [Mr. DOWNEY], or the gentlewoman from Rhode Island [Mrs. SCHNEIDER] in saying that this is an evil, lurking danger, a so-called value-added tax. I'll clarify my statement when they correct their statements.

Now the tax in this bill is not a value-added tax. It is an excise tax. It is an excise tax, just as we see with many other Government taxes. Those of us in this House must accept that because it is an increase, but it is a broad-based tax. But you can say by the same token if you want to take that approach, as you have done all through this debate because it sounds good, it sounds like you are a populist and you are going to protect the consumer, and say you are against any form of a broad-based tax, and you call it a VAT. It is an excise tax, and we will admit that.

But I can also say to you that actually under this proposed amendment, you are going to take 12 cents per barrel on oil, and this is unacceptable if we accept the "polluters pay" principle.

May I say, Mr. Chairman, I hope the gentleman from Oklahoma will expand on this and put this in the RECORD because these figures are facts, they are not allegations, they are not just an aversion. They are cold facts, and the Members ought to listen to them.

Mr. Chairman, no one seems to question the need for Superfund reauthorization. We all know we need to provide more funding to clean up the Nation's worst, neglected toxic waste sites. But we should not go about this in a punitive and unfair manner. We should not put an unfair financial burden on States with important chemical and oil production and refining sectors. The bill reported by the Committee on Ways and Means strikes the appropriate balance among many competing goals without placing a harsh, unfair burden on the Southwest.

The question of who should pay for the cleanup is troublesome. Currently the burden falls on two industries. Yet over the past few months a number of lists have been published showing responsible parties associated with known waste sites. These have been most enlightening—reading like a "who's who" of the Fortune 500 and 1,000. Now there are many oil and chemical companies identified on the lists, but there also are an astonishing number of companies that have never been identified in the media with hazardous waste problems. Today, there is virtually no correlation between those who pay the current feedstock and petroleum taxes and those who contributed to the waste problems. Not only is the theory behind current Superfund taxes flawed, but its application is even worse. According to EPA, of the 30 most frequently found substances at 881 hazardous waste sites, only 11 are subject to tax. Moreover, petroleum refiners generate less than 5 percent of the Nation's wastes, yet they currently provide about 16 percent of the Superfund revenues.

As a result, many of those responsible for mismanagement of hazardous waste sites are escaping responsibility altogether. Yet hazardous waste management is a benefit to all of our society.

That is why three legislative committees, Ways and Means, Energy and Commerce, and Public Works and Transportation, have recommended the adoption of a board-based coporate tax to fund the Superfund. The Superfund Excise Tax recommended by the Ways and Means Committee is an equitable and rational approach to our concern for adequate funding. I want to take a few moments to highlight why this is a preferable approach:

The Committee provisions represent a true-polluter-pays approach to funding the Superfund. Despite misrepresentations by opponents of the bill, I want to again emphasize that many different industries have contributed to the many Superfund sites.

For example: The EPA has identified some 290 potentially responsible parties that may have contributed to the Stringfellow Superfund site in California, yet the majority of the companies have not contributed one cent to the Superfund.

The Superfund excise tax [SET] rate is extremely low—amounting to only a few cents on a $100 purchase. The SET can be expected to cost an average family with an income of $20,000 about $8 to $10 per year.

Sharp increases in oil taxes, as proposed in the Downey-Frenzel amendment, would severely impact the poor. The cost of home heating, a primary expense for poor families, will be increased, making higher oil taxes far more regressive than the SET.

The SET is not a value-added tax. A VAT is a tax on the value added to the product

or service at each stage of production and development, and covers every facet of the economy. The SET is imposed on only 30,000 large manufacturers. Whereas the VAT is applied at all stages of the economy, the SET is applied only to tangible property at the manufacturing stage.

The SET revenues will be dedicated only to the cleanup of hazardous wastes, VAT's are usually general purpose revenue raisers.

The committee-passed 'SET would not have the unfair impact on trade that the Downey-Frenzel tax would. The SET would be imposed on imports and rebates would be made for companies that manufacture products for export—thereby making the SET trade neutral. The Downey proposal would give foreign companies an unfair advantage and the proponents of that plan never address the trade issue as part of the Superfund debate.

The creation of an unfair trade balance between U.S. and foreign oil companies would hurt national security, and drive U.S. jobs abroad. Because of the competition from foreign oil companies, the U.S.-based companies would probably not be able to fully pass on the costs of the Downey tax, and would, therefore, find it easier to move more operations abroad to save on the cost of labor.

Mr. Chairman, I could go on, but the point that has to be made is that we ought not to put a heavy, unfair burden on only two industries when many more share the responsibility for abandoned hazardous waste sites. The petroleum and chemical industries would continue to pay heavily under the committee bill. They will not get off scot-free. But other industries must share some of the burden as well. The committee bill is fair and sound and I urge my colleagues to support it and reject the Downey amendment.

Mr. DUNCAN. Mr. Chairman, I yield 3 minutes and 30 seconds to the gentlewoman from Maryland [Mrs. BENTLEY].

(Mrs. BENTLEY asked and was given permission to revise and extend her remarks.)

Mrs. BENTLEY. Mr. Chairman, many Members of this Congress are responsible for getting the Superfund reauthorization bill to the House floor for consideration and vote. I have participated in two of the five committees responsible for sending to the House floor the Superfund reauthorization.

I commend the work of the leadership and all members of the committees involved in preparation of the Superfund legislation. The compromise reached between the House Committee on Energy and Commerce and the Committee on Public Works and Transportation is to be commended.

I am concerned because I have at least 68 potential hazardous waste sites in my two counties and there are similar sites in most congressional districts.

Therefore, it is imperative that the 99th Congress pass legislation to address the crisis now facing our Nation in response to release and clean up of toxic wastes. As equally important to providing Superfund reauthorization is ensuring that the funding of the necessary Superfund funds not adversely affect our domestic industrial base.

Without a strong domestic industrial base, how much longer can we pass legislation to provide programs on the scale of Superfund? With a continuing trend of heavy taxation on our domestic industry, funds to finance the much needed Superfund Program will eventually not be available. We must reverse the dangerous trend of passing legislation that places a heavy tax burden on our domestic industry. It is for this reason that I urge my colleagues to join me in supporting the version of the Superfund bill passed by the House Committee on Ways and Means.

In financing Superfund, and I want to emphasize this point, a heavy tax burden must not be placed on our eroding industrial base. The Superfund excise tax is designed to keep the feedstock tax down and provide for a broad-based manufacturers' excise tax.

The broad-based tax would apply to imports flooding our shores and causing an imbalance in our trade. A broad-based tax would not adversely affect our domestic industry. We must continue to ensure that our Federal tax codes are written to protect the American industry and promote our trade policies.

The Superfund excise tax is trade neutral. Foreign products are affected to the same degree that our domestic products are affected. Therefore, supporting the House Ways and Means passed Superfund bill will promote and protect American trade and industry. A sound trade and strong domestic industry results in funding needed to protect our environment from hazardous wastes.

Again I urge all my colleagues to

join me in supporting the reauthorization of Superfund with a broad-based taxing scheme and oppose any attempt to pass an increase in the feedstock tax. Support the passage of the broad-based tax and retain the feedstock tax at present level so that our domestic industry may compete abroad.

Clean up of hazardous wastes is the responsibility of all of us. A broad-base tax will help finance Superfund by all who will benefit from a sound national economy and healthy environment.

I urge you to vote against the Downey-Frenzel amendment.

Mr. DOWNEY of New York. Mr. Chairman, I yield myself 2 minutes.

I just want to clarify some of the confusion about the cost per barrel and per gallon since the esteemed gentleman from Texas [Mr. PICKLE] seems to have confused those two quantities of measurement.

The 11.9 cents per barrel translates in terms of gasoline to 9.3 cents in the price of a gallon of gasoline or home heating oil. Since 0.3 cent is not a usual commodity of exchange, we can translate that to about a $1.50 increase in gasoline price for every 10,000 miles driven, not a very great increase. For those people who are heating their home with oil, and the gentlewoman from Rhode Island pointed out that that is true in her area, and it is certainly true in mine, the person who uses about 950 gallons per heating season, which is about average, will wind up paying $3 more as a result of this change.

So this is modest, it is small, and it is something, frankly, that I believe consumers, while they do not like to see increases in prices, when they understand that it goes in large measure to clean up the toxic waste sites that may or may not be in their community, can understand and can also live with.

Mr. Chairman, I yield 1 additional minute to the gentleman from Texas.

Mr. PICKLE. Mr. Chairman, I was not privileged to hear all of the figures of the gentleman, but I will read them and study them and try to evaluate them in the spirit in which they were given.

Assuming that the figures are correct in the sense the gentleman used them, I would also want to point out that the cost under the broad-based tax is extremely low to the individual. It is approximately $8 per year for a family making $20,000. The tax is so small that a family will not notice it, so we must compare one with the other.

I used figures down there when I said that may be a little bold as an assertion, but it is no more bold than when you would say that, because oil companies and oil refineries produce the products, or feedstocks produce them, they are, therefore, responsible for all the waste throughout the United States: and that is simply not a fact. So I am just trying to say that there is a reason to have a balance when you make these arguments

Mr. DOWNEY of New York. Mr. Chairman, let me consume 1 additional minute of my time.

Mr. Chairman, the gentleman has piqued my curiosity and also since we are now throwing numbers around, there is no reason why we cannot throw some of the Environmental Protection Agency numbers or the chemical manufacturers associations' numbers.

In 1981, the quantities of waste generated by industrial type, and this is a 1981 figure, said that the chemical and petroleum industries were responsible for 71 percent of the quantities of waste generated, the chemical and petroleum industries, to repeat. All other industries were responsible for 29 percent of the wastes.

Under the national sales tax, value-added tax, the industrial share of who will pay, the petroleum industry will pay 18 percent of this problem, and all other industries 82 percent.

So on the one hand, they are generating the waste, and on the other hand, everybody else is paying the bill, clearly something that is unfair and a gross distortion.

□ 1345

Let us talk about the State of Texas. It is a wonderful State, and one that levies on the price of a barrel of oil a 4.6-percent tax on oil generated in the State of Texas. As opposed to the Frenzel-Downey amendment, which would tax a barrel of oil at 0.44 cents.

The CHAIRMAN. The time of the gentleman has expired.

Mr. DOWNEY of New York. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. SCHEUER].

(Mr. SCHEUER asked and was given permission to revise and extend his remarks.)

Mr. SCHEUER. I thank the gentleman for yielding, and I rise in strong support of the Downey-Frenzel amendment. I firmly believe that those who create the toxic wastes should pay for cleanup of the toxic wastes.

The Downey-Frenzel measure would retain our current "polluter pays" policy in Superfund financing.

Without this amendment, toxic waste clean-up will be financed by a so-called Superfund excise tax which is, in essence, a value-added tax.

An excise tax on manufacturer products may be called a SET or a VAT, but in reality it is a national sales tax.

What this means is that the consumers will pay the cost of toxic waste cleanup, rather than the industries that created the problem.

The Downey-Frenzel amendment will discourage industry from indiscriminantly creating hazardous wastes because it contains a provision for a "waste-end" tax.

Downey-Frenzel calls for a revenue raising mix that includes taxes on chemical feedstocks, waste disposal, and petroleum.

Some general revenue is included in the package, but the cleanup costs would be funded primarily by polluters rather than already overburdened American taxpayers.

I join Ways and Means Committee Chairman ROSTENKOWSKI in supporting this amendment.

I congratulate the authors of ths amendment on both sides of the aisle, and urge my colleagues to support it.

Mr. DUNCAN. Mr. Chairman, I yield 1½ minutes to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Chairman, let me say that we have gotten to the crux of the argument; that is, should the real polluters be required to pay?

Let me tell you, we have got some EPA studies that have identified the real polluters. In the Stringfellow site in California, for example, the 25 largest contributors, the 25 largest industries who contribute to that site are presently untaxed, and would go untaxed under the Downey amendment. Untaxed.

Let me give some examples: Avon, Beatrice Foods, Borden, Coca-Cola, Hewlitt-Packard, Holiday Inns, CBS, Sears, Pan Am, Revlon, Hormel, Knight-Ridder newspapers, have all contributed to those sites and yet they go untaxed under the Downey proposal.

Now, if you really want the polluters, those who are contributing the waste, to those streams that are causing Americans such problems today, you really need a broader-based tax. Now, either the Duncan proposal or the Ways and Means proposal aims at accomplishing that.

The Downey proposal says that you are going to tax again the originators of the products that were used by these polluters to make products we have all enjoyed.

I suppose we could go one step further and tax the dinosaurs if they were still around, or the fellow that made the dinosaurs, but the truth is, we ought to catch the end polluters; the guy that made a product, received a profit, and then polluted our environment as a result of it.

Those are the folks that ought to be taxed. Under the Downey proposal, they go untaxed. Under the committee proposal or the Duncan proposal, they are taxed.

So I am suggesting to the Committee that if we really want to be equitable, aim it at the real polluters; they are all of us, all of the manufacturers, all of us in this society.

The CHAIRMAN. The time of the gentleman has expired.

Mr. DOWNEY of New York. Mr. Chairman, I yield myself such time as necessary to engage the gentleman from Louisiana in a colloquy.

The gentleman mentioned the Stringfellow site, and listed a number of the companies; Revlon, Avon and others that have been identified at them.

Is my understanding correct that to the extent that liability for what they put into that site is determined that they will in fact be required to pay for cleanup?

Mr. TAUZIN. If the gentleman will yield, yes, and so will the chemical companies and the oil companies who contributed to those sites.

Under the gentleman's proposal, those people are taxed twice and the others are left out. The proposal says: "If we find you guilty, you pay. All of you." However, if we find a chemical company guilty, we make them pay at the site plus the tax.

Mr. DOWNEY of New York. I think that the point that those listening to the debate need to understand is that this law continues to go after all of the

companies, whether they are chemical, oil, metal processing, or not that pollute, to the extent that they can be determined to be polluters and in the instances that they have been found, they will pay and pay heavily.

Mr. TAUZIN. Would the gentleman yield?

Mr. DOWNEY of New York. Yes, I yield.

Mr. TAUZIN. I cannot deny that. That is true, and I am glad the bill does that; but we are talking about the tax provisions. Who will pay into the orphan fund to take care of the sites where you find no identified polluter?

So who do we look for? We look for those who produce products that go into those sites. Who are they? They are the Avons, the Coca-Colas and all the others, and the chemical companies and oil companies.

We ought to tax them all, not just some.

Mr. DOWNEY of New York. If I can point out, the connection between the Avons and the Coca-Colas is infinitely more tenuous than it is among the Arcos, the du Ponts and the Dows, where the connection is much tighter much cleaner.

They are the ones providing these toxic bullets that have been fired into the ground; they are the ones who need to be taxed.

Mr. TAUZIN. Would the gentleman further yield?

Mr. DOWNEY of New York. Yes.

Mr. TAUZIN. I submit to the gentleman, the connection is much cleaner when we find the manufacturer who is actually dumping his wastes in a site.

When those manufacturers are the ones that are dumping it, 87 percent of the time, and the chemical and oil companies are only contributing 13 to 14 percent of the total, then the tax that levies all of the burden on a 13-percent responsible part seems to be a bit confiscatory.

Mr. DOWNEY of New York. Well, I would just say further to the gentleman, to the extent, as I said before and as he readily admits; to the extent that the responsible parties have been found, they will be paying.

The CHAIRMAN. The gentleman from New York [Mr. DOWNEY] has consumed 2½ minutes. The gentleman from Tennessee [Mr. DUNCAN] has 7½ minutes remaining.

Mr. DUNCAN. Mr. Chairman, it is enlightening to me; I did not know that Mr. DOWNEY's amendment did show some favoritism or delete special interests.

I yield 2 minutes to the gentleman from Delaware [Mr. CARPER].

Mr. CARPER. Mr. Chairman, I am compelled to rise today in opposition to the amendment offered by the gentleman from New York [Mr. DOWNEY].

I realize that this is one of those issues about which reasonable men and women will disagree. I would hope that the alternatives to the Ways and Means Committee proposal are both defeated, so that we will ultimately have an up-or-down vote next week on the committee's proposal.

Just as beauty is deemed to be in the eye of the beholder, I suppose fairness is as well. There has been a lot of discussion today on what is fair and is not. It just does not seem fair to me that the feedstock tax on oil and chemical industries should rise dramatically while almost 10,000 companies in 33 major industries responsible for Superfund sites go untaxed. That does not seem fair.

Nor does it seem fair that 80 percent of the cleanup burden fall on the shoulders of the oil and chemical industries, as they would under the Downey amendment.

On the other hand, it does seem fair for a significant feedstock tax to be imposed on the petrochemical industry; and it does under the committee version of the bill.

It does seem fair to me that a waste end tax should fall on those who are creating the waste, and under the committee's version of the bill, that that occurs as well.

The Committee on Ways and Means' proposed also seems fair because there is a tax on gasoline. Damage caused by leaking underground storage tanks will be paid for by that small tax.

□ 1555

Finally, it seems fair to me that the broad cross section of industries, other than the oil and chemical industry, many of which are indeed responsible for causing existing dump sites, should help pay for their cleanup. For these reasons, I am compelled to again oppose both alternatives to the committee's package and would hope on Tuesday next that we would have an opportunity to defeat them and vote for the committee's proposal.

I thank the gentleman for yielding.

Mr. DOWNEY of New York. Mr.

Chairman, may I inquire how much time I have remaining?

The CHAIRMAN. The gentleman from New York has 4 minutes remaining.

Mr. DOWNEY of New York. Mr. Chairman, I yield 1½ minutes to the gentleman from Illinois [Mr. BRUCE].

Mr. BRUCE. Mr. Chairman, I would like to ask the gentleman from Texas, the distinguished member of the Ways and Means Committee, to clarify the purpose of a provision in the committee's bill on the Superfund revenue package. Specifically, I would like to ask whether the version of the so-called rainwater amendment accurately reflects the intent and purpose of the gentleman's original proposal?

Mr. PICKLE. Mr. Chairman, will the gentleman yield?

Mr. BRUCE. I yield to the gentleman from Texas.

Mr. PICKLE. I thank the gentleman for yielding.

Mr. Chairman, I thank the gentleman for his timely inquiry. As the gentleman is aware, the purpose of my original amendment was to assure that rainwater or other water that is not a listed or identified hazardous waste and which is injected into a UIC well—with a Safe Drinking Water Act permit—would not be taxed under Superfund. Unfortunately, under the wording of the final version of this provision, nonhazardous water would be taxed if it became mixed with a hazardous waste even if the mixing occurred immediately prior to injection. As the author of this amemdment, I can assure the House that that was not my original intent. I must say that my position did not prevail in its entirety. In most cases, mixing the hazardous waste immediately prior to disposal can be avoided only by spending a considerable amount of money on additional equipment, including pumps, to keep the two liquid streams separate. There seems little environmental benefit to such separation; it would simply be an additional expense for unnecessary equipment.

Mr. BRUCE. Under the gentleman's proposal would mixing of nonhazardous waste and hazardous waste as part of the actual production process be taxed?

Mr. PICKLE. Yes, clearly that type of mixing results in a waste stream that would be taxed because it is an actual hazardous waste and is part of the manufacturing process. However, it is not appropriate to tax a separate category of liquids, which would include rainwater, that are mixed with waste immediately prior to disposal.

I think that makes common sense. While I cannot offer an amendment at this time, I would hope that we might take another look at this bill as it moves forward and help clarify this point.

Mr. BRUCE. Mr. Chairman, I thank the gentleman, and I yield back the balance of my time.

The CHAIRMAN. The gentleman from Tennessee [Mr. DUNCAN] has 5½ minutes remaining.

Mr. DUNCAN. Mr. Chairman, I yield 1 minute to the gentleman from New Mexico [Mr. RICHARDSON].

Mr. RICHARDSON. Mr. Chairman, there are three reasons why this proposal must be defeated. First, it is unfair; second, it would cost jobs; and third, it would drive the oil and chemical industries offshore. On the unfairness issue, the EPA has identified over 100 companies that contribute to the pollution at these sites. Why should just two be cited? In addition to that, we have got cases where a national fund has been established, and in the past what did we do about those companies that have polluted in the past that have simply disappeared? By increasing the feedstock tax we further damaged the trade imbalances between domestically produced feedstocks and imported goods made from those feedstock building blocks.

The 71 statistic is therefore a bit unfair.

These are the reasons why this must be rejected but I do think that the gentleman from New York and the gentleman from Minnesota have studied this issue carefully, they have contributed tremendously to ensure that Superfund is done adequately, but regrettably this is not the way to do it.

Mr. DUNCAN. Mr. Chairman, I yield 4 minutes to the gentleman from Oklahoma [Mr. JONES].

(Mr. JONES of Oklahoma asked and was given permission to revise and extend his remarks.)

Mr. JONES of Oklahoma. Mr. Chairman, both the Public Works Committee and the Commerce Committee recommended to Ways and Means that Superfund be paid for with a broad-based tax. When the opponents of this broad-based tax were unable to defeat it, then many of them referred to red hearrings about what it was or what it was not. Let me take these things head on.

First of all, is the committee tax a VAT, a value-added tax? Absolutely not. If you look at the Treasury definition of the value-added tax or the European definition of a value-added tax, it does not meet the test. It is not a tax imposed to every step of the manufacturing process until it reaches the consumer.

In fact, the chairman of the Senate Finance Committee, the gentleman from Oregon, I can assure you, would not be supporting this broad-based tax if it had any resemblance to a value-added tax, particularly in light of the fact that Mr. Ullman of Oregon was defeated on that issue. It is not a value-added tax.

Is it a national sales tax? Again resorting to the U.S. Tax Code definition, it is not a sales tax. It is not imposed upon the retailer or the seller. As a matter of fact, exempt entirely are retailers, wholesalers, distributors; exempt entirely are small businesses; exempt entirely is food and processing of food. So it is not a national sales tax.

What is it? What it is, is a manufacturers excise tax.

The definition was lifted directly from that section of the U.S. Tax Code that provides for manufacturers excise tax. We already have it in the Tax Code. Virtually everybody in this House last year voted for one identical to this on sports fishing equipment and that money was used to finance the conservation fund. This is identical to the manufacturers excise tax on sports fishing equipment or the excise tax on firearms.

Now is a manufacturers excise tax regressive? Again the answer is "No." I would cite to you the study by William Nordhaus, former Chairman of the Council of Economic Advisers to the President, presently professor at Yale. His study shows that the Superfund excise tax will not even be a blip on the Consumer Price Index, no effect. In fact, his study further shows that the Downey substitute would be far more regressive because it is built into essential products; namely, energy, food, processed food, products essential to middle- and low-income families. It would be far more regressive.

So those of you who are thinking about voting for the Downey substitute, and particularly those of you who come from Northeastern States, think twice before you do it because when those home heating bills go up or the cost of gasoline goes up, you may well be held responsible. Or when the domestic refiners go bust and become more dependent on foreigners, you may be held responsible.

Now let us use Mr. Downey's test of fairness. Is the Downey substitute fair? Again I would say absolutely not because it violates the basic principle of "the polluter pays." Now we have heard statistics that were used last year also that oil and chemical companies generate the majority of the waste, and that is true. But that is not the important point. They clean up on site most of the waste that they produce. What is important, what we are trying to clean up in this bill, are the wastes that were dumped, disposed of, and when you look at that, the new EPA studies show that oil and chemcials only dispose of, are responsible for disposing of, 22½ percent of all those often waste toxic sites. Yet under the Downey substitute those two industries, responsible for 22½ percent of the problem we are trying to clean up, are going to be assessed 81 percent of the taxes to clean them up. Now that is not fair. So I think on the test of fairness the Downey substitute clearly fails.

The EPA study shows that of the NPL sites that they studied that there are 6,200 different parties responsible for the mess we are trying to clean up. Yet the Downey substitute would tell 15 of those parties that, "You are going to have to pay two-thirds of all the costs of cleaning up," and the 6,185 other responsible parties get off scot-free. That is not fair.

Mr. DOWNEY of New York. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio [Mr. Pease].

(Mr. PEASE asked and was given permission to revise and extend his remarks.)

Mr. PEASE. Mr. Chairman, I rise in support of the Downey amendment. I would like to make a couple of points. First, this is indeed the first step toward a VAT tax. This country is not ready for a VAT tax. It has not been discussed in the Congress. It ought not to be approved as part of this Committee. Second, I can well understand why Congressmen representing oil States or States with large chemical companies would want to support this bill. I cannot understand why Congressmen from other States would want to do so, why they would want to ask all of the large corporations in their districts, whether or not they produce toxic wastes, to pay the freight for those companies that do. I cannot understand that. Third, I would ask Members to keep in mind that the bill that we voted on last year overwhelmingly in this House dealt a higher level of taxation on chemical companies and petroleum companies than does the Downey-Frenzel substitute. Last year in the bill that we passed, we assessed $6.7 billion of the cost of Superfund cleanup against chemical feedstocks and petroleum. The Downey-Frenzel substitute assesses only $1.5 billion. This is not a new and onerous burden which we are putting on companies in the chemical and petroleum areas.

Finally, just in relation to chemical companies, let me point out that in 1983, according to a study that I commissioned, the effective income tax rate of chemical companies as a group was –1 percent. They should hardly be complaining about a small increase in the Superfund tax when they can wind up with a negative effective income tax rate which they had in 1983. I urge support for the Downey amendment.

Mr. JONES of Oklahoma. Mr. Chairman, will the gentleman from Ohio yield for one point?

Mr. PEASE. If I have the time, I will.

Mr. JONES of Oklahoma. Using the study on what the effective tax rate of chemical companies is, I would just like to say that petroleum companies from that same study have an effective tax rate of, I believe it was 41 percent, one of the highest in the country.

The CHAIRMAN. The Chair recognizes the gentleman from Tennessee [Mr. DUNCAN] who has one-half minute remaining.

Mr. DUNCAN. Mr. Chairman, I yield one-half minute to the gentleman from Minnesota [Mr. VENTO].

Mr. DOWNEY of New York. Mr. Chairman, I also yield my one-half minute to the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Chairman, I ask unanimous consent that after I enter

SUPERFUND TAX DISTRIBUTION ANALYSIS

Industry	Waste disposers at NPL sites (Percent)	Percent of tax burden—			
		Current law	Ways and Means	Downey	Duncan
Chemical and allied producers	18	84	28.2	37.75	44.13
Oil companies	4.5	16	23.64	42.89	28.57
Total oil and chemical	22.5	100	51.84	80.64	72.7
Other parties	77.5		48.16	19.36	27.3

into a colloquy, I may have it placed after title II of the legislation.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Chairman, I would like to enter into a colloquy with the gentleman from California [Mr. FAZIO] and the gentleman from Oklahoma [Mr. MCCURDY] concerning section 213 of the bill.

As the principal architects of this section, I want to commend you for your work and environmental concern. Many of our colleagues and I have DOD-contaminated sites in our district and have been frustrated in our attempts to secure prompt action. Your proposal is a commendable effort to meet the needs of our constituents.

The gentlemen are aware of a situation in my district where a facility under the jurisdiction of the Secretary of Defense is responsible to some degree for the contamination of a municipal ground water supply. I am, of course, referring to the situation in New Brighton, MN, which was discussed in the House yesterday.

As a result of this ground water contamination, this community has had to spend nearly $4 million to acquire a new water supply by drilling new wells. Although this contamination was discovered 5 years ago, the Department of Defense has not provided any reimbursement or assistance to the city of New Brighton for the costs which it has incurred to acquire a new water supply.

As section 213 is presently written, it is not clear that New Brighton is eligible to receive reimbursement for these expenses.

First, while the preponderance of evidence of liability points to the Army, there has not been a final determination that the Army is solely responsible for New Brighton's ground water contamination. It is abundantly clear, however, that the Army will ultimately bear considerable responsibility for this contamination. Second, the language in the Defense Environmental Restoration Program [DERP], does not clearly establish that funds can be used to reimburse a local government for costs incurred in connection with the acquisition of a permanent alternative water supply obtained by the drilling of new wells. Finally, it is unclear as to whether DERP may reimburse a local government for costs which have already been incurred or whether the program is prospective and will only reimburse for costs incurred after the date of enactment of this legislation.

As the gentlemen know, these are critical questions which will impact upon the ability of the city of New Brighton to provide safe, clean drinking water to its residents.

It is my understanding that the legislation passed in the other body has similar provisions for addressing the responsibilities of the Department of Defense and that specific differences in language will be resolved in conference. I am wondering if the gentlemen would be willing to consider certain modifications to this subsection of section 213 to clarify that New Brighton and other similarly situated local governments would be eligible for this program?

Mr. FAZIO. Mr. Chairman, will the gentleman yield?

Mr. VENTO. I yield to the gentleman from California.

Mr. FAZIO. My colleague from Oklahoma, Mr. MCCURDY, and I have had an opportunity to discuss this issue with the gentleman from Minnesota. We are well aware of the New Brighton situation. I wish to commend the gentleman for his persistent efforts on behalf of this community which he represents. I would like to assure the gentleman that I am not opposed to clarifications to remedy the concerns of New Brighton in our conference with the other body.

Mr. MCCURDY. Mr. Chairman, will the gentleman yield?

Mr. VENTO. I am pleased to yield to the gentleman from Oklahoma.

Mr. MCCURDY. As the gentleman from California has stated, I understand the problem he faces concerning this legislation and believe that we can accommodate his concerns during the conference but I would ask that the gentleman assist us in obtaining more definitive information on the potential costs associated with this effort.

We cannot make a determination of liability but believe the Federal Government should be as responsible as any other private citizen for its actions, and I look forward to working with the gentleman from Minnesota to correct these concerns.

Mr. VENTO. I appreciate the cooperation of both gentleman. I will certainly provide any information and assistance that I can to the gentleman concerning the potential cost to the DOD's Defense Environmental Restoration Program.

Mr. Chairman, I appreciate the gentleman's cooperation.

Mr. LELAND. Mr. Chairman, today I rise in strong support of the financing formula for the Superfund Program as passed by the Committee on Ways and Means, which includes increased feedstock and petroleum taxes, the so-called Superfund excise tax or SET. I favor this approach for a number or reasons.

First of all, I see the Ways and Means package as the best method of implementing the principle of making the polluter pay. Recently, a list of responsible parties was published. The list identified many manufacturing companies as contributers to the proliferation or toxic wastes. It would be a crime to let companies who share responsibility for dumping to go free from paying for their part of the cleanup.

Under the present financing system, there is virtually no correlation between those who shoulder the majority of the cost of the Superfund Program and those who contributed to the problem. For example, two States have paid over 50 percent of the total funding for toxic waste cleanup since 1981, while they have generated only 18 percent of the hazardous substances. I would like to point out that these figures were compiled by the Congressional Budget Office.

We all know that many of the worst toxic waste sites have been abandoned, where no party can be held responsible. The intent of the Superfund Program is to pay for the cleanup sites where no single specific firm can be held responsible. Therefore, all industries that have been identified as contributers to the general hazardous waste problem should bear part of the cleanup cost. I see the SET financing formula as a step toward correcting this problem I have just described.

A broad-based tax on manufacturers to finance the fund is what both the House Energy and Commerce and Public Works Committees recommended the Ways and Means Committee adopt. We should follow the advice of the committees who have spent many long months debating the cleanup issue.

Furthermore, the SET formula is the only proposal that is trade neutral. This approach would help keep U.S. industries competitive in the international marketplace since it exempts exports from the tax, and applies the tax to all imports. Thus, the SET would ensure that imports do not have an unfair advantage in our domestic markets. The proposal offered by my colleagues from New York and Minnesota would seriously aggravate the already catastrophic trade deficit crisis, since the tax burden would fall primarily on domestic producers. Just the other day we passed a bill limiting textile imports because we correctly realized that foreign competitors have a disproportionate advantage over American companies in the U.S. market. Passage of the Downey-Frenzel amendment would mark a reversal of the clear policy statement we made with the textile vote.

It has been said that the SET is a regressive tax, that it will raise prices to the average consumer. This is simply not true. The tax itself is small—only eight ten-thousandths of the total price would be subject to tax. It is estimated that the SET will increase the price of a box of detergent by fifteen one-hundredths of a cent, and the price of midsize car by a little more than $6.

However, in contrast, sharp increases in the tax on the petroleum industry, as my colleagues have proposed, would hurt the poor in our country to a far greater degree than the SET tax. The costs of home heating oil, for example, would surely rise as a result of increases in the feedstock tax. Necessary—vital, if you will—costs such as this are ones which cannot be avoided by people at all income levels. Middle and lower income people spend a larger share of their income on items such as electricity, gasoline and food, all of which require petroleum in the production chain. I believe the Downey-Frenzel amendment is more regressive than the SET.

We cannot and should not delay enacting a new Superfund law. But we must finance it with a reliable source of revenue. The Superfund excise tax, supported by the Energy and Commerce and Public Works Committees and reported by the Ways and Means Committee, provides such a source. At the same time, it does not inflict greater damage on our trade imbalance and does not impact disproportionately on the poor. I urge my colleagues to support the Ways and Means Superfund financing mechanism.

☐ 1410

The CHAIRMAN. All time has expired. Under the unanimous consent agreement, debate for today has concluded.

Mr. DOWNEY of New York. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Hoyer, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2817) to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes, had come to no resolution thereon.

[From the Congressional Record, Dec. 10, 1985, pp. H11547-H11671]

□ 1530

SUPERFUND AMENDMENTS OF 1985

The SPEAKER pro tempore. Pursuant to House Resolution 331 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 2817.

□ 1531

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 2817) to amend the Comprehensive Environmental Response Compensation, and Liability Act of 1980, and for other purposes, with Mr. HOYER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Friday, December 6, 1985, title V of the text of H.R. 3852, which is considered as an original bill for the purpose of amendment, had been considered as having been read for amendment. Pending was an amendment offered by the gentleman from Tennessee [Mr. DUNCAN], on which there are 15 minutes of debate remaining, and there are 15 minutes of debate remaining on an amendment proposed to be offered by the gentleman from New York [Mr. DOWNEY].

After the disposition of the amendments to title V, the Committee had agreed that debate on an amendment to be offered by the gentleman from Massachusetts [Mr. FRANK], adding a new title VI and all amendments thereto, would be limited to 50 minutes to be equally divided and controlled by the gentleman from Massachusetts [Mr. FRANK], and a Member opposed thereto.

The gentleman from Tennessee [Mr. DUNCAN] had 7½ minutes of debate remaining on his amendment and the gentleman from New York [Mr. DOWNEY] had 7½ minutes of debate remaining in opposition.

The Chair recognizes the gentleman from Tennessee [Mr. DUNCAN].

Mr. DUNCAN. Mr. Chairman, I yield myself such time as I may consume.

(Mr. DUNCAN asked and was given permission to revise and extend his remarks.)

Mr. DUNCAN. Mr. Chairman, the first vote today is between the committee bill, which includes a value-added tax, and my bill, which does not include a value-added tax but which provides up to the same level of financing as the committee bill.

The second vote today will be between the bill of my distinguished colleague, the gentleman from New York [Mr. DOWNEY], and the survivor of the first vote. I will save my remarks on the second vote until that is before us.

Regarding the first vote, we should focus on the policy issues. The value-added tax is regressive, placing the highest burden on the lowest income people. The value-added tax would have a destabilizing effect. Regarding the value-added tax and its effect on business, it would be most burdensome on marginal enterprises, many of which are smaller startup businesses.

Funding a program with such a regressive tax is as yet unprecedented. If Congress adopts a value-added tax, there will be little opportunity to act against increasing the rates. Adoption of this 0.8-percent tax for Superfund will almost certainly assure that a value-added tax will become the source of funding for every important program we consider. A 20-percent tax rate is not unheard of in the European Community.

For Superfund the value-added tax would cost more to administer than it would raise. For future programs it will not cost any more, but it will almost certainly expand.

Mr. Chairman, the Duncan amendment provides the fairest method of providing sufficient resources for the Superfund Program. I certainly hope that Members will give it their support.

The CHAIRMAN. The Chair recognizes the gentleman from New York [Mr. DOWNEY].

Mr. DOWNEY of New York. Mr.

Chairman, I yield myself 1 minute.

Mr. Chairman, there are several things wrong with the Duncan amendment.

First, it has a tax that basically no one knows how to figure it will be applied. It is based on the number of employees a firm employs; it bears little relationship those to who pollute and those who pay. One thing we have found in writing tax legislation: This is not the place to try exotic experiments.

Second, the Ducan amendment does not provide $10 billion for 5 years; it is less money than that, as will be explained in some detail by the gentleman from New Jersey [Mr. FLORIO].

We have an opportunity here to make our voice heard when my amendment comes up later, when we can kill the value-added tax and kill the Duncan tax, which frankly will not, in my opinion, raise the money, nor will it be properly applied to the people who have done the polluting.

Mr. DUNCAN. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. FIELDS].

(Mr. FIELDS asked and was given permission to revise and extend his remarks.)

Mr. FIELDS. Mr. Chairman, I rise in support of the Duncan amendment.

The Duncan amendment is good public policy because it requires the petroleum and chemical industries to pay their fair share for hazardous waste site cleanup, but it does not tax those industries so heavily that their international competitiveness will suffer.

The petrochemical industry is one of the few industries which improves the U.S. balance of trade. But, the industry is already declining in world competitiveness. The industry's positive trade balance declined from $14 billion in 1981 to $10.3 billion in 1984. Employment in the petrochemical industry has declined 14 percent.

Yet, under the Downey amendment, chemical feedstock taxes would increase 66 percent.

The Downey amendment would hit the U.S. refining industry particularly hard; 119 of the 315 domestic refineries that were in operation at the beginning of 1981 have been shut down.

Employment in the U.S. petroleum refining industry has fallen by more than 32,000 workers between 1981 and 1984. Under the current conditions of slack demand, refiners would not be able to pass through the massive 1500 percent increase in crude oil taxes called for by the Downey amendment.

Although the Downey amendment taxes imports as well as domestic products, foreign competitors could avoid the tax by shifting to the production of downstream products. The Downey amendment attempts to tax downstream products—but, estimates are that the downstream tax will only collect $70 million. So, I have to conclude that the downstream tax will be far from effective.

And, finally, U.S. products made with petrochemical products for export will be more expensive and less competitive in the world market if Downey passes.

Now is not the time to raise petroleum taxes 1,500 percent and chemical taxes 66 percent.

If you don't want to increase our trade deficit. If you don't want the petrochemical industry to follow the path of domestic steel and automobiles—don't pass the Downey amendment. Support the Duncan alternative.

□ 1540

Mr. DOWNEY of New York. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan [Mr. WOLPE].

(Mr. WOLPE asked and was given permission to revise and extend his remarks.)

Mr. WOLPE. Mr. Chairman, I rise today in opposition to the amendment of the gentleman from Tennessee, and in strong support of the amendment offered by our colleagues, Mr. DOWNEY and Mr. FRENZEL, which would strike the value-added tax from this title and replace it with a slight increase in chemical and waste disposal taxes, and an increase in the petroleum excise tax. It is no accident that this alternative to the financing package reported by the Ways and Means Committee is supported by a broad coalition of manufacturers, labor unions, environmental groups, and taxpayer organizations, as well as the chairman of the Committee on Ways and Means, Mr. ROSTENKOWSKI himself.

The Downey-Frenzel amendment enjoys this wide range of support because it is the only proposal that meets both the essential criteria for a sound Superfund financing program: It raises the $10 billion in revenues that are required and it avoids regressive value-added taxation.

It achieves this goal by the logical approach of linking Superfund revnues with the products and practices that gave rise to the cleanup program in the first place. This, the committee proposal fails to do. The petroleum and chemical industries generate 71 percent of the Nation's hazardous waste, but they would pay only 18 percent of the value-added tax proposed in the committee bill. Under that plan, an unfair 82 percent of the value-added tax burden would fall on industries and products that are not anywhere near as directly responsible for the hazardous waste crisis facing our Nation today.

Moreover, the value-added tax of the committee bill runs directly counter to the historic doctrine—upon which Federal environmental law is grounded—that those responsible for pollution should pay for its cleanup. The broad-based value-added corporate tax simply makes no sense—either from the standpoint of tax fairness or environmental policy.

By contrast, the Downey-Frenzel amendment places the tax burden on those most directly responsible for pollution. But its approach is reasonable. Contrary to the claims of some, the Downey-Frenzel amendment is in fact sensitive to the competitive problems facing the petrochemical industry in the international market place. While the proposal slightly increases the chemical feedstock tax rates, they remain much lower than the rates approved by the House in last year's superfund proposal and should have a minimal impact on the chemical industry, which has experienced a strong recovery since 1982. Moreover, chemicals produced for export are wholly exempt from the new tax, while imported raw chemicals and their derivatives are taxed.

As for the petroleum excise tax, which should be of particular concern to those of us who come from the Midwest and Northeast, its rate under Downey-Frenzel is set so low that it would add less than three-tenths of a cent to the price of a gallon of gasoline or heating oil. This would add no more than $1.50 to the annual gasoline bill of a driver averaging 10,000 miles per year at 20 miles per gallon. Such an increase can only have a negligible impact on consumers, the chemical industry, and our balance of trade.

Finally, the waste-end tax—which encourages permanent solutions to the toxics problem by making such activities as incineration and recycling tax-exempt—is also slightly increased in the Downey-Frenzel plan. The Department of the Treasury has testified, however, that the impact of a domestic waste-end tax on international trade would be "miniscule" when compared with other economic factors.

In short, the amendment offered by Mr. DOWNEY and Mr. FRENZEL today is a well thought out plan that offers a logical, consistent and fair method for financing this essential environmental program. It fully deserves the enthusiastic, bipartisan support of this body.

Mr. DUNCAN. Mr. Chairman, I yield such time as he may consume to the gentleman from South Carolina [Mr. HARTNETT].

(Mr. HARTNETT asked and was given permission to revise and extend his remarks.)

Mr. HARTNETT. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in strong opposition to H.R. 2817 and the amendments thereto.

Mr. Chairman, In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund). The purpose of this legislation was to assist in the cleanup of hazardous waste sites that posed an imminent threat to the public welfare. As such, Congress authorized the expenditure of $1.6 billion over a 5-year period, expiring September 30, 1985.

Today, therefore, the House is proposing to increase funding for this program to $10 billion over the next 5 years. This would expand the funding for Superfund by approximately 700 percent. There should be no doubt that the Superfund must be increased. The hazardous waste sites of this country are not only dangerous, they are an embarrassment to a society as technologically advanced as ours. However, Congress must realize that all the ills of this country can not be cured by merely increasing funding levels. What started off as a logical proposal to increase funding for a critical governmental program, has turned into an illogical contest to see who can enact the largest fund, regardless of practicality. Recent evidence suggests that increasing funding beyond an adequate level will not accelerate the pace of cleanups. In fact, the Office of Technology Assessment states that increased spending may have little if any effect on the disposal of hazardous waste. However, you can rest assured that regardless of which funding mechanism the House approves, the creation of a $10 billion fund will result in the loss of American jobs.

Obviously, the health of the American people is the first priority of any legislation. If I believed that $10 billion would be a more functional sum to fulfill the original purpose of the Superfund legislation, I would enthusiastically support this funding level. Unfortunately, this amount is unrealistic and unbearable. Rest assured that I support increasing the Superfund and the theory that the polluter should pay, but, not at the price of American jobs. Therefore, I urge my colleagues to vote against each of the $10 billion funding alternatives offered today in order to consider a more focused and practical authorization level.

Mr. DUNCAN. Mr. Chairman, I yield 2 minutes to the gentleman from Louisiana [Mr. Moore], a member of the committee.

(Mr. MOORE asked and was given permission to revise and extend his remarks.)

Mr. MOORE. Mr. Chairman, last Friday we concluded most of the debate on these important amendments. I would like to recap the issue for just a moment.

You have three ways of paying for the Superfund. The first one you are about to vote on is the Duncan amendment. I support it. I certainly support it over and above the Downey amendment, which comes after it.

The Duncan amendment recognizes that all Americans should be paying something into the Superfund because all Americans are causing the toxic waste with the consumer goods they are buying and by the 9,000 manufacturers across the country who are not in the oil, gas, and chemical industries that are creating the toxic waste. It does that by having some of this money come out of the general fund and then if that is not enough, triggering in an environmental surtax on all manufacturers at a later point.

His method, therefore, is superior to the Downey amendment. He is realizing the important point that we all have an obligation and that an industry that only causes 15 percent, and that is all the oil, gas and chemical companies cause, 15 percent of the wastes should not be paying 100 percent of the taxes, or 92 percent of the taxes, as they do under the Downey amendment.

So I would urge my colleagues to vote for the Duncan amendment. It is a far more realistic, a far more fair proposition.

The basic question is, Who is going to pay for Superfund? We all want it. Let us be fair about it and let us all of us who are contributing to it pay our fair share.

Mr. DOWNEY of New York. Mr. Chairman, I yield one-half minute to the gentleman from Georgia [Mr. Fowler].

Mr. DUNCAN. Mr. Chairman, I also yield one-half minute to the gentleman.

The CHAIRMAN. The gentleman from Georgia [Mr. Fowler] is recognized for 1 minute.

(Mr. FOWLER asked and was given permission to revise and extend his remarks.)

Mr. FOWLER. Mr. Chairman, I thank the gentleman from Tennessee and the gentleman from New York. I thank both my colleagues for yielding me this minute simply to defend the package of the Ways and Means Committee.

I commend the gentleman form New York [Mr. Downey] and the gentleman from Tennessee [Mr. Duncan]. We are all on board trying to do one thing, to find a way to eliminate these poisons that are in the ground, that are in the water, and that must be cleaned up.

This debate over taxes has only one real essential. How do we do it?

Well, we have heard all the arguments about fairness. I say to you that 80 cents on $1,000 as the price we pay for operating an industrial society is a very, very cheap price tag so that we get the job done. We can spend years in litigation with oil and chemical companies. We can spend years, as we have, in pointing fingers of blame.

The manufacturers' excise tax at the level it is, a dollar for a refrigerator, $4 for a $10,000 car, will get the job done to eliminate the poisons and toxic wastes on the fairest possible basis.

Vote "no" on Duncan. Vote "no" on Downey.

The best solution is in the bill.

Mr. DUNCAN. Mr. Chairman, I yield my remaining 1 minute to the gentleman from Ohio [Mr. LATTA].

(Mr. LATTA asked and was given permission to revise and extend his remarks.)

Mr. LATTA. Mr. Chairman, at the outset, let me say that there is more involved than merely extending Superfund in this legislation. The question has to be, Are we ready to give birth to a new form of taxation, namely, VAT?

Now, if we were to ask that same question to a former Member of this House, a former chairman of the Ways and Means Committee, Mr. Al Ullman, his answer would be "no," because if there is one thing that brought his defeat, it was his sponsorship of VAT. When he went home to face the electorate, they said with loud voices, "We don't want VAT."

The question is whether or not this House or whether the American people now want VAT. I say that they do not. I think we ought to consider that before we vote on this matter.

Let me say that the Downey-Frenzel approach makes the polluters pay. The question is whether or not we want all Americans to pay for what the polluters are doing.

According to the U.S. Environmental Protection Agency, three industries generate 93 percent of the toxic wastes in this country. In my judgment, these industries should bear the largest financial burden for cleaning up their wastes.

Mr. DOWNEY of New York. Mr. Chairman, I yield 3 minutes to the gentleman from New Jersey [Mr. FLORIO].

(Mr. FLORIO asked and was given permission to revise and extend his remarks.)

Mr. FLORIO. Mr. Chairman, I rise in opposition to the Duncan amendment and in support of the Downey amendment.

The Duncan amendment amounts to nothing more than an effort to cut the funding level contained in the bill from $10 billion to $7.7 billion. Even this inadequate amount relies on over $2.3 billion in general revenues upon the general taxpayer.

Efforts to lower the $10 billion funding level contained in the bill have repeatedly been rejected—both in the context of last year's bill and during the course of every committee's consideration of Superfund legislation this year. These efforts have been rejected because it has become clear that $10 billion is needed to begin to address the problem which lies ahead of us. The General Accounting Office, for example, tells us that Superfund's share of total cleanup costs could run as high as $39 billion. Even at the level of $10 billion for 5 more years, we are only making a downpayment on the total cleanup effort.

Supporters of the Duncan amendment may try to blur the issue of funding level by explaining in intricate detail how their amendment could conceivably result in a fully funded Superfund. The simple fact is it won't. Proposing a $2.3 billion standby tax at the discretion of an OMB which repeatedly told us that it only wants $5 billion is fairly transparent. We cannot for a moment delude ourselves into thinking that this amendment will result in a $10 billion fund.

The Duncan amendment is also a budget buster. It relies on $2.3 billion in general revenues, far more than any other proposal, and far more than the budget resolution provides. We cannot endorse an approach which puts the cleanup burden on the general taxpayer at a time when so many programs are competing for Federal budget dollars.

The Duncan amendment is worse than the committee version and the Downey amendment because it tries to make every American pay for cleaning up these sites. If we are ever to achieve satisfactory environmental protection in this country, we must make the market reflect the cost of pollution. We will never do that by forcing the costs of cleanup onto the American taxpayer. Those who are responsible for pollution should pay for it. The Duncan amendment completely violates this principle.

I urge my colleagues to oppose the Duncan amendment.

Mr. Chairman, I rise in support of one of the most important amendments we will consider today. This amendment would restore to Superfund the principle that the polluter should pay to clean up the damage he has caused. It would eliminate the regressive tax system narrowly approved by the Ways and Means Committee that not only violates this principle, but requires the average citizen to foot the bill for toxic waste cleanup.

In marathon, late night session, the Ways and Means Committee approved by one vote the imposition of a value-added tax to support Superfund. This regressive tax would be assessed on all industries regardless of their relative innocence in creating the toxic waste problems addressed by the progam. Ultimately it is a tax paid by all Americans, by all those who buy products.

This value-added tax is opposed by the administration by the environmental community and by an enormous coalition of business groups. The administration believes the tax is regressive and will damage any prospects for meaningful reform of our Tax Code. The environmental community opposes the tax because it violates the important principle that polluting industries should be forced to absorb the costs of decades of negligent waste management. Industry groups believe that the value-added tax opens the door for enormous tax increases in the years ahead, and that they should not be required to pay for cleaning up someone else's pollution.

The President has threatened to veto any Superfund bill that contains a broad-based tax proposal. This threat escalates the tax debate to a new level—approval of a broad-based tax system could jeopardize the timely reauthorization of this important program. We simply cannot afford to engage in such a game of brinkmanship over legislation as important as this bill.

The feedstock taxes in the Downey amendment are far more moderate and less burdensome than the taxes the House approved overwhelmingly last year, 323 to 33. These taxes would be imposed on industries which currently have an overall negative corporate income tax rate—according to a report by the Joint Committee on Taxation, the effective U.S. corporate income tax rate for the chemical industry was minus 17 percent in 1982.

The subcommittee I chair held hearings on the crucial issue of whether Superfund taxes will contribute to the worsening balance of trade problems now experienced by our domestic chemical industry. The clear conclusion of these hearings was that the industry's problems are not caused by Superfund—but rather by far more significant international conditions such as the value of the dollar and cheap energy prices abroad.

The Downey amendment is designed to provide fairness to our domestic chemical industry. First, it extends taxes on imported feedstocks at the same level as those produced domestically so there is no disadvantage to domestic producers. Second, it contains a new tax on imported derivatives of feedstocks to minimize any advantage of producing feedstocks and their derivatives outside the United States.

The Downey amendment represents a responsible approach to the funding of the Superfund Program. I urge my colleagues to support this important amendment.

Mr. KEMP. Mr. Chairman, I rise in opposition to the Ways and Means Superfund tax bill and the Downey-Frenzel substitute, and in support of the Duncan-Gregg substitute.

First, I strongly support reauthorization of the Superfund Program. I believe that one of our top national priorities must be to clean up these abandoned hazardous waste sites so that Americans no longer need to worry about the contents of leaking barrels near their homes or what's buried under the grassy hill their children use as a playground.

While I am not happy about each and every provision in H.R. 2817, I believe that the bill is a vast improvement over the Superfund legislation which expired at the end of September. H.R. 2817 should effectively focus the Government's resources and efforts on expeditiously cleaning up abandoned hazardous waste sites.

I do oppose the funding mechanism adopted by the Committee on Ways and Means, however. While the committee may call it by some other name, the plain fact is that the financing package creates a value-added tax that would fall disproportionately on the poor and lower income Americans.

The value-added tax is one of the most unfair and regressive forms of taxation. Because a VAT shows up as higher prices to consumers, it absorbs a larger percentage of a lower income family's earnings. A VAT especially hurts the unemployed, the elderly, and families who are trying to reach the first rung on the ladder of economic opportunity.

I also oppose the Downey-Frenzel substitute, which would dramatically increase the tax burden on the petrochemical industry and basically require only these industries to pay for the bulk of cleanups, despite the fact that they have contributed only a small portion of wastes to these sites.

The EPA has indentified more than 4,000

businesses, industries, and government firms as contributors of waste to Superfund sites. Yet, only a dozen petrochemical companies pay alsmost 70 percent of current Superfund taxes, completely out of proportion to the level of hazardous wastes they dispose of each year. Loading the industry up with additional taxes will not get at those companies that illegally dump hazardous wastes. Such action will, however, cripple one of the most crucial industries in our country.

We all benefit from petrochemicals. While petrochemicals may be generated by a specific industry, they are used by practically every industry in this country, from auto producers to grocery manufacturers to the home furnishings industry to clothing manufacturers to cosmetic companies. I believe that it violates any sense of fairness to hold one industry responsible for the disposal methods of thousands of industries.

I do intend to vote for the Duncan-Gregg substitute. While I do not favor an environmental surcharge, I believe that Duncan-Gregg is the best alternative of the plans from which we have to choose.

I strongly feel that the cleanup of hazardous wastes should be paid for by the broadest based tax of all—the income tax. If a clean environment is one of our top naltional priorities, then we should not be afraid to use general revenues to pay for it. We all benefit from a clean environment and from the products in which petrochemicals are used.

I strongly support increased funding for the Superfund Program, which the Duncan-Gregg substitute ensures. I do have serious doubts as to whether EPA can effectively use $10 billion over the next 5 years. So I am pleased that the surcharge would not go into effect unless the additional money actually can be used to clean up hazardous waste sites.

I believe that House passage of the Duncan-Gregg substitute also will improve chances for final enactment of Superfund legislation. The other body has already gone on record as opposing a value-added tax, and I think that the Downey-Frenzel substitue will be unacceptable to them. Passage of the Duncan-Gregg substitute will enable conferees to find an acceptable mix of financing mechanisms to ensure expeditious passage of a final Superfund package.

Mr. Chairman, we need to pass a strong Superfund Program, which ensures adequate funding and strikes a balance between environmental needs and economic realities. I believe that our best chance to achieve this most important environmental goal is to approve this legislation with the Duncan-Gregg substitute tax package.

I urge my colleagues to support the Duncan-Gregg substitute and oppose the Downey-Frenzel substitute and the Ways and Means VAT tax bill.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Tennessee [Mr. DUNCAN].

The question was taken; and the Chairman announced that the noes appeard to have it.

RECORDED VOTE

Mr. DUNCAN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 74, noes 349, not voting 11, as follows:

[Roll No. 443]

AYES—74

Archer
Bartlett
Barton
Bateman
Bereuter
Bilirakis
Boulter
Broomfield
Brown (CO)
Broyhill
Callahan
Campbell
Cheney
Cobey
Coble
Crane
Dannemeyer
DeLay
DeWine
Dornan (CA)
Duncan
Fields
Gekas
Gingrich

Goodling
Hammerschmidt
Hansen
Hendon
Henry
Hiler
Hillis
Hyde
Kemp
Kindness
Kramer
Latta
Lewis (FL)
Lott
Lowery (CA)
Luken
Lungren
Madigan
McCollum
McEwen
McMillan
Michel
Moore
Moorhead
Oxley
Pashayan
Quillen
Regula
Rogers
Rudd
Schuette
Schulze
Shumway
Siljander
Smith (NE)
Smith, Denny (OR)
Smith, Robert (OR)
Spence
Strang
Stump
Sundquist
Sweeney
Swindall
Taylor
Thomas (CA)
Traxler
Vander Jagt
Walker
Whitehurst
Wylie

NOES—349

Ackerman
Addabbo
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Armey
Aspin
Atkins
AuCoin
Badham
Barnard
Barnes
Bates
Bedell
Beilenson
Bennett
Bentley
Berman
Bevill
Dowdy
Downey
Dreier
Durbin
Dwyer
Dymally
Dyson
Early
Eckart (OH)
Eckert (NY)
Edgar
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Evans (IA)
Evans (IL)
Fascell
Fawell
Fazio
Feighan
Fiedler
Jones (NC)
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kastenmeier
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Kostmayer
LaFalce
Lagomarsino
Lantos
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)

Biaggi
Bliley
Boehlert
Boggs
Boland
Bonior (MI)
Bonker
Borski
Bosco
Boucher
Boxer
Breaux
Brown (CA)
Bruce
Bryant
Burton (CA)
Burton (IN)
Bustamante
Byron
Carney
Carper
Carr
Chandler
Chapman
Chappell
Clay
Clinger
Coats
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Coughlin
Courter
Coyne
Craig
Crockett
Daniel
Darden
Daschle
Daub
Davis
de la Garza
Dellums
Derrick
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)

Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Fowler
Frank
Franklin
Frenzel
Frost
Fuqua
Gallo
Garcia
Gaydos
Gejdenson
Gephardt
Gibbons
Gilman
Glickman
Gonzalez
Gordon
Gradison
Gray (IL)
Gray (PA)
Green
Gregg
Grotberg
Guarini
Gunderson
Hall (OH)
Hall, Ralph
Hamilton
Hartnett
Hatcher
Hawkins
Hayes
Hefner
Heftel
Hertel
Holt
Hopkins
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Ireland
Jacobs
Jeffords
Jenkins
Johnson

Lewis (CA)
Lightfoot
Lipinski
Livingston
Lloyd
Loeffler
Long
Lowry (WA)
Lujan
Lundine
Mack
MacKay
Manton
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCandless
McCloskey
McCurdy
McDade
McGrath
McHugh
McKernan
Meyers
Mica
Mikulski
Miller (CA)
Miller (WA)
Mineta
Mitchell
Moakley
Molinari
Mollohan
Monson
Montgomery
Moody
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Natcher
Neal
Nichols
Nielson
Nowak
O'Brien
Oakar

Oberstar
Obey
Olin
Ortiz
Owens
Packard
Panetta
Parris
Pease
Penny
Pepper
Perkins
Petri
Pickle
Porter
Pursell
Rahall
Rangel
Ray
Reid
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino

Saxton
Schaefer
Scheuer
Schneider
Schroeder
Schumer
Seiberling
Sensenbrenner
Sharp
Shaw
Shelby
Shuster
Sikorski
Sisisky
Skeen
Skelton
Slattery
Slaughter
Smith (FL)
Smith (IA)
Smith (NJ)
Smith, Robert (NH)
Snowe
Snyder
Solarz
Solomon

Tallon
Tauke
Tauzin
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Udall
Valentine
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Watkins
Waxman
Weaver
Weiss
Wheat
Whitley
Whittaker
Whitten
Williams
Wilson
Wirth
Wise

Roe
Roemer
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Savage

Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Swift
Synar

Wolf
Wolpe
Wortley
Wright
Wyden
Yates
Yatron
Young (AK)
Young (FL)
Young (MO)
Zschau

NOT VOTING—11

Boner (TN)
Brooks
Chappie
Dickinson

Hunter
Kasich
McKinney
Miller (OH)

Nelson
Price
Weber

□ 1605

Mrs. LONG, Mr. BURTON of Indiana, and Mr. SOLOMON changed their votes from "aye" to "no."

Messrs. MADIGAN, BURTON of Indiana, STUMP, and BOULTER changed their votes from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. DOWNEY OF NEW YORK

Mr. DOWNEY of New York. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Downey of New York: Strike out title V of the bill and insert in lieu thereof the following:

TITLE V—AMENDMENTS OF THE INTERNAL REVENUE CODE OF 1954

SEC. 501. SHORT TITLE.

This title may be cited as the "Superfund Revenue Act of 1985".

PART I—SUPERFUND AND ITS REVENUE SOURCES

SEC. 511. EXTENSION OF ENVIRONMENTAL TAXES.

(a) IN GENERAL.—Subsection (d) of section 4611 of the Internal Revenue Code of 1954 (relating to termination) is amended to read as follows:

"(d) APPLICATION OF TAXES.—The taxes imposed by this section shall apply after October 31, 1985, and before October 1, 1990."

(b) TECHNICAL AMENDMENT.—Section 303 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on November 1, 1985.

SEC. 512. INCREASE IN TAX ON PETROLEUM.

(a) INCREASE IN TAX.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum) are each amended by striking out "0.79 cent" and inserting in lieu thereof "11.9 cents".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on November 1, 1985.

SEC. 512. INCREASE IN TAX ON CERTAIN CHEMICALS.

(a) INCREASE IN RATE OF TAX; LEAD ADDED AS TAXABLE CHEMICAL.—Subsection (b) of section 4661 of the Internal Revenue Code of 1954 (relating to amount of tax imposed on certain chemicals) is amended by striking out the table contained in such subsection and inserting in lieu thereof the following:

"In the case of:	The tax (before any inflation adjustment) is the following amount per ton:
Organic substances:	
Acetylene	$6.25
Benzene	6.25
Butadiene	6.25
Butane	5.54
Butylene	6.25
Ethylene	6.25
Methane	3.44
Napthalene	6.25
Propylene	6.25
Toluene	6.25
Xylene	11.19
Inorganic substances:	
Ammonia	4.20
Antimony	6.25
Antimony trioxide	6.25
Arsenic	6.25
Arsenic trioxide	6.25
Barium sulfide	6.25
Bromine	6.25
Cadmium	6.25
Chlorine	4.03
Chromite	1.52
Chromium	6.25
Cobalt	6.25
Cupric oxide	6.25
Cupric sulfate	6.25
Cuprous oxide	6.25
Hydrochloric acid	1.24
Hydrogen fluoride	6.25
Lead	6.25
Lead oxide	6.25
Mercury	6.25
Nickel	6.25
Nitric acid	3.90
Phosphorous	6.25
Potassium dichromate	6.25
Potassium hydroxide	6.25
Sodium dichromate	6.25
Sodium hydroxide	3.72
Stannic chloride	6.25
Stannous chloride	6.25
Sulfuric acid	1.03
Zinc chloride	6.25
Zinc sulfate	6.25."

(b) INFLATION ADJUSTMENTS IN AMOUNT OF TAX.—Section 4661 of such Code is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) INFLATION ADJUSTMENTS IN AMOUNT OF TAX.—

"(1) IN GENERAL.—In the case of any taxable chemical sold in a calendar year after 1986, the amount of the tax imposed by subsection (a) shall be the amount determined under subsection (b) increased by the applicable inflation adjustment for such calendar year.

"(2) APPLICABLE INFLATION ADJUSTMENT.—

"(A) IN GENERAL.—In the case of a taxable chemical, the applicable inflation adjustment for the calendar year is the percentage (if any) by which—

"(i) the applicable price index for the preceding calendar year, exceeds

"(ii) the applicable price index for 1985.

"(B) APPLICABLE PRICE INDEX.—For purposes of subparagraph (A), the applicable price index for any calendar year is the average for the months in the 12-month period ending on September 30 of such calendar year of—

"(i) in the case of organic substances, the producer price index for basic organic chemicals as published by the Secretary of Labor, or

"(ii) in the case of inorganic substances, the producer price index for basic inorganic chemicals as published by the Secretary of Labor.

"(3) ROUNDING.—If any increase determined under paragraph (1) is not a multiple of 1 cent, such increase shall be rounded to the nearest multiple of 1 cent (or, if the increase determined under paragraph (1) is a multiple of 1/2 of 1 cent, such increase shall be increased to the next higher multiple of 1 cent)."

(c) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

(1) Section 4662 of such Code (relating to definitions and special rules) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

"(1) TAX-FREE SALES.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661 on the sale by the manufacturer or producer of any taxable chemical for export, or for resale by the purchaser to a second purchaser for export.

"(B) PROOF OF EXPORT REQUIRED.—Rules similar to the rules of section 4221(b) shall apply for purposes of subparagraph (A).

"(2) CREDIT OR REFUND WHERE TAX PAID.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if—

"(i) tax under section 4661 was paid with respect to any taxable chemical, and

"(ii) such chemical was exported by any person,

credit or refund (without interest) of such tax shall be allowed or made to the person who paid such tax.

"(B) CONDITION TO ALLOWANCE.—No credit or refund shall be allowed or made under subparagraph (A) unless the person who paid the tax establishes that he—

"(i) has repaid or agreed to repay the amount of the tax to the person who exported the taxable chemical, or

"(ii) has obtained the written consent of such exporter to the allowance of the credit or the making of the refund.

"(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection."

(2) Paragraph (1) of section 4662(d) of such Code (relating to refund or credit for certain uses) is amended—

(A) by striking out "the sale of which by such person would be taxable under such section" and inserting in lieu thereof "which is a taxable chemical", and

(B) by striking out "imposed by such section on the other substance manufactured or produced" and inserting in lieu thereof "imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (b) or (e) of this section)".

(d) SPECIAL RULES FOR CERTAIN CHEMICALS.—

(1) REPEAL OF EXEMPTION FOR CHEMICALS DERIVED FROM COAL.—

(A) Section 4662(b) of such Code (relating to exemptions; other special rules) is amended by striking out paragraph (4) and by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(B) Paragraph (3) of section 4662(d) of such Code is amended by striking out "subsection (b)(5)" each place it appears and inserting in lieu thereof "subsection (b)(4)".

(2) EXEMPTION FOR LEAD HAVING TRANSITORY PRESENCE DURING EXTRACTING PROCESS.—Clause (i) of section 4662(b)(5)(B) of such Code (relating to substance having transitory presence during extracting process), as redesignated by paragraph (1), is amended by inserting "lead," before "lead oxide".

(3) SPECIAL RULE FOR XYLENE.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (5) the following new paragraph:

"(6) SPECIAL RULE FOR XYLENE.—Except in the case of any substance imported into the United States or exported from the United States, the term 'xylene' does not include any separated isomer of xylene."

(4) SPECIAL RULE FOR NITRIC ACID USED IN PRODUCTION OF NITROCELLULOSE.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (6) the following new paragraph:

"(7) SPECIAL RULE FOR NITRIC ACID USED IN PRODUCTION OF NITROCELLULOSE.—The tax imposed under section 4661 on nitric acid used by the producer of such acid in the production of nitrocellulose shall not exceed $0.24 per ton."

(e) EXEMPTION FOR CERTAIN RECYCLED CHEMICALS.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (7) the following new paragraph:

"(8) RECYCLED CHROMIUM, COBALT, NICKEL, AND LEAD.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any chromium, cobalt, nickel, or lead which is diverted or recovered in the United States from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process).

"(B) EXEMPTION NOT TO APPLY WHILE CORRECTIVE ACTION UNCOMPLETED.—Subparagraph (A) shall not apply during any period that required corrective action by the taxpayer is uncompleted.

"(C) REQUIRED CORRECTIVE ACTION.—For purposes of subparagraph (B), required corrective action shall be treated as uncompleted during the period—

"(i) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to—

"(I) a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, or

"(II) a final order under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

"(ii) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

"(D) SOLID WASTE.—For purposes of this paragraph, the term 'solid waste' has the meaning given such term by section 1004 of the Solid Waste Disposal Act, except that such term shall not include any byproduct, coproduct, or other waste from any process of smelting, refining, or otherwise extracting any metal."

(f) EXEMPTION FOR ANIMAL FEED SUBSTANCES.—

(1) IN GENERAL.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (8) the following new paragraph:

"(9) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—

"(A) IN GENERAL.—In the case of—

"(i) nitric acid,

"(ii) sulfuric acid,

"(iii) ammonia, or

"(iv) methane used to produce ammonia,

which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term 'qualified animal feed substance' means any substance—

"(i) used in a qualified animal feed use by the manufacturer, producer, or importer,

"(ii) sold for use by any purchaser in a qualified animal feed use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

"(C) QUALIFIED ANIMAL FEED USE.—The term 'qualified animal feed use' means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

"(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical."

(2) Refund or credit for substances used in the production of animal feed.—Subsection (d) of section 4662 of such Code (relating to refunds and credits with respect to the tax on certain chemicals) is amended by adding at the end thereof the following new paragraph:

"(4) Use in the production of animal feed.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(9), and

"(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(9) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section."

(g) Certain Exchanges by Taxpayers Not Treated as Sales.—Subsection (c) of section 4662 of such Code (relating to use by manufacturers) is amended to read as follows:

"(c) Use and Certain Exchanges by Manufacturer, Etc.—

"(1) Use treated as sale.—Except as provided in subsections (b) and (e), if any person manufactures, produces, or imports any taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

"(2) Special rules for inventory exchanges.—

"(A) In general.—Except as provided in this paragraph, in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of an inventory exchange with another person—

"(i) such exchange shall not be treated as a sale, and

"(ii) such other person shall, for purposes of section 4661, be treated as the manufacturer, producer, or importer of such chemical

"(B) Registration requirement.—Subparagraph (A) shall not apply to any inventory exchange unless—

"(i) both parties are registered with the Secretary as manufacturers, producers, or importers of taxable chemicals, and

"(ii) the person receiving the taxable chemical has, at such time as the Secretary may prescribe, notified the manufacturer, producer, or importer of such person's registration number and the internal revenue district in which such person is registered.

"(C) Inventory exchange.—For purposes of this paragraph, the term 'inventory exchange' means any exchange in which 2 persons exchange property which is, in the hands of each person, property described in section 1221(1)."

(h) Effective Dates.—

(1) In general.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on November 1, 1985.

(2) Repeal of tax on xylene for periods before October 1, 1985.—

(A) Refund of tax previously imposed.—In the case of any tax imposed by section 4661 of the Internal Revenue Code of 1954 on the sale or use of xylene before October 1, 1985, such tax (including interest, additions to tax, and additional amounts) shall not be assessed, and if assessed, the assessment shall be abated, and if collected shall be credited or refunded (with interest) as an overpayment.

(B) Waiver of statute of limitations.—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of subparagraph (A) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

(C) Xylene to include isomers.—For purposes of this paragraph, the term "xylene" shall include any isomer of xylene whether or not separated.

(3) Inventory exchanges.—

(A) In general.—Except as otherwise provided in this paragraph, the amendment made by subsection (g) shall apply as if included in the amendments made by section 211 of the Hazardous Substance Response Revenue Act of 1980.

(B) Recipient must agree to treatment as manufacturer.—In the case of any inventory exchange before January 1, 1986, the amendment made by subsection (g) shall apply only if the person receiving the chemical from the manufacturer, producer, or importer in the exchange agrees to be treated as the manufacturer, producer, or importer of such chemical for purposes of subchapter B of chapter 38 of the Internal Revenue Code of 1954.

(C) Exception where manufacturer paid tax.—In the case of any inventory exchange before January 1, 1986, the amendment made by subsection (g) shall not apply if the manufacturer, producer, or importer treated such exchange as a sale for purposes of section 4661 of such Code and paid the tax imposed by such section.

(D) Registration requirements.—Section 4662(c)(2)(B) of such Code (as added by subsection (g)) shall apply to exchanges made after December 31, 1985.

SEC. 514. REPEAL OF POST-CLOSURE TAX AND TRUST FUND.

(a) Repeal of Tax.—

(1) Subchapter C of chapter 38 of the Internal Revenue Code of 1954 (relating to tax on hazardous wastes) is hereby repealed.

(2) The table of subchapters for such chapter 38 is amended by striking out the item relating to subchapter C.

(b) Repeal of Trust Fund.—Section 232 of the Hazardous Substance Response Revenue Act of 1980 is hereby repealed.

(c) Effective Date.—The amendments made by this section shall take effect on October 1, 1983.

SEC. 515. WASTE MANAGEMENT TAX.

(a) General Rule.—Chapter 38 of the Internal Revenue Code of 1954 (as amended by section 514 of this Act) is amended by adding after subchapter B the following new subchapter:

"Subchapter C—Hazardous Waste Management Tax

"Sec. 4671. Waste management tax.
"Sec. 4672. Exemptions; reduction of tax where prior taxable event.
"Sec. 4673. Special rules for waste water treatment, incineration, etc.
"Sec. 4674. Backup tax on generator.
"Sec. 4675. Definitions and special rules.

"SEC. 4671. WASTE MANAGEMENT TAX.

"(a) Imposition of Tax.—There is hereby imposed a tax on—

"(1) the receipt of hazardous waste at a qualified hazardous waste management unit,

"(2) the receipt of hazardous waste for transport from the United States for the purpose of ocean disposal, and

"(3) the exportation of hazardous waste from the United States.

"(b) Amount of Tax.—

"(1) In general.—The amount of the tax imposed by subsection (a) with respect to each ton of hazardous waste shall be determined in accordance with the following table:

	If the taxable event is:	
	Land disposal	Any other taxable event
"For calendar year:	The tax per ton is:	
1986	$37.00	$4.15
1987	39.00	4.15
1988	42.00	4.15
1989	44.00	4.15
1990	47.00	4.15.

"(2) Definitions relating to amount of tax.—For definition of—

"(A) hazardous waste, see section 4675(a)(1), and

"(B) land disposal and any other taxable event, see section 4675(a)(5).

"(c) Liability for Tax.—

"(1) Waste received at management units.—The tax imposed by subsection (a)(1) shall be paid by the owner or operator of the qualified hazardous waste management unit.

"(2) Waste received for transport from the United States.—The tax imposed by subsection (a)(2) shall be paid by the person holding the permit issued for transport for ocean disposal under section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972.

"(3) Waste exported.—The tax imposed by subsection (a)(3) shall be paid by the exporter.

"(d) Termination.—The taxes imposed by this section shall not apply after September 30, 1990.

"SEC. 4672. EXEMPTIONS; REDUCTION OF TAX WHERE PRIOR TAXABLE EVENT.

"(a) Exemption for Certain Removal and Remedial Actions, Etc.—The tax imposed by section 4671 shall not apply to the receipt or export of hazardous waste pursuant to—

"(1) a corrective action specified in—

"(A) an initial or final order, or

"(B) a proposed or final permit,

issued by the Administrator under the Solid Waste Disposal Act or a State under a hazardous waste program authorized under section 3006 of such Act,

"(2) a proposed or final closure plan approved by the Administrator or such a State,

"(3) a removal or remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 which has been selected or approved by the Administrator, or

"(4) an action to correct an emergency situation arising from a product spill which is certified by the Administrator to the Secretary as carrying out the purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

"(b) Exemption for Waste Received at any Federal Facility.—The tax imposed by section 4671 shall not apply to any hazardous waste received at any facility owned by the United States.

"(c) Reduction in Tax Where Prior Taxable Event.—

"(1) In general.—If—

"(A) tax under section 4671 or 4674 was paid with respect to any hazardous waste, and

"(B) tax under section 4671 is subsequently imposed on such waste (hereinafter in this subsection referred to as the 'later taxable event'),

then the tax under section 4671 on the later taxable event shall be reduced by the amount determined under paragraph (2).

"(2) Amount of reduction.—The amount of the reduction determined under this paragraph is the product of—

"(A) the weight of hazardous waste involved in the later taxable event, multiplied by

"(B) the lesser of—

"(i) the highest rate of tax paid under section 4671 or 4674 with respect to any prior taxable event involving such waste (determined without regard to this subsection), or

"(ii) the rate of tax imposed by section 4671 with respect to the later taxable event (as so determined).

"SEC. 4673. SPECIAL RULES FOR WASTE WATER TREATMENT, INCINERATION, ETC.

"(a) Exemption for Waste Received at Certain Waste Water Treatment Units.—The tax imposed by section 4671 shall not apply to hazardous waste received at any waste water treatment unit.

"(b) Incineration, Etc. Within 90 Days of Receipt.—

"(1) In general.—Under regulations prescribed by the Secretary, if—

"(A) tax under section 4671 was paid with respect to the receipt of any hazardous waste at any qualified hazardous waste management unit or for transport described in section 4671(a)(2), and

"(B) such waste is incinerated on land (or the equivalent of incineration on land) by any person within 90 days after the date of the first receipt referred to in subparagraph (A),

then the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4671.

"(2) Equivalent of incineration.—For purposes of subparagraph (A), a method, technique, or process shall be treated as the equivalent of incineration on land if—

"(A) such method, technique, or process meets detailed performance standards established by the Environmental Protection Agency, and

"(B) such standards require a destruction and removal efficiency for the hazardous waste involved at least equivalent to the destruction and removal efficiency applicable to incineration on land.

"(c) Qualified Chemical Fuels or Solvents.—

"(1) In general.—Under regulations prescribed by the Secretary, if—

"(A) tax under section 4671 was paid with respect to any hazardous waste,

"(B) such waste is used by any person in the production of any qualified chemical fuel or solvent, and

"(C) such fuel or solvent is by such person sold for use or used in any industrial or commercial use,

then the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4671.

"(2) Qualified chemical fuel or solvent.—For purposes of subparagraph (A), the term 'qualified chemical fuel or solvent' means any chemical or solvent which is determined by the Administrator as not being a hazardous waste.

"(d) Recycling of Batteries.—Under regulations prescribed by the Secretary, if—

"(1) tax under section 4671 was paid with respect to the receipt of any battery at a qualified hazardous waste management unit, and

"(2) the recycling of such battery begins at such a unit by any person within 90 days after the date of the first receipt of such battery at any qualified hazardous waste management unit,

then the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4671.

"(e) Tax To Apply While Corrective Action Not Completed.—

"(1) In general.—The exemption provided by subsection (a) shall not apply (and no credit or refund shall be allowed under this section) with respect to any activity conducted at a facility (or part thereof) during the period that required corrective action remains uncompleted with respect to such facility (or part).

"(2) Required corrective action.—For purposes of paragraph (1), required corrective action shall be treated as uncompleted during the period—

"(A) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, and

"(B) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

"(3) Rate of tax with respect to waste water treatment.—The rate of tax imposed by section 4671 by reason of this subsection with respect to hazardous waste received at any waste water treatment unit shall be 15 cents per ton.

"SEC. 4674. BACKUP TAX ON GENERATOR.

"(a) Imposition of Tax.—There is hereby imposed a tax on each ton of hazardous waste which, as of the close of the 270-day period beginning on the day after the day on which such waste was generated, has not been—

"(1) received at a qualified hazardous waste management unit,

"(2) received for transport from the United States for the purpose of ocean disposal, or

"(3) exported from the United States.

"(b) Rate of Tax.—The rate of the tax imposed by subsection (a) shall be the rate of tax applicable to land disposal under section 4671 at the end of the 270-day period described in subsection (a).

"(c) Liability for Tax.—The tax imposed by subsection (a) shall be paid by the generator of the hazardous waste.

"(d) Exemptions.—

"(1) Small generators.—The tax imposed by subsection (a) shall not apply to hazardous waste generated during any month if the generator of such waste does not generate more than 100 kilograms of hazardous waste during such month.

"(2) Waste legally disposed of in publicly owned treatment works.—The tax imposed by subsection (a) shall not apply to hazardous waste disposed of in any publicly owned treatment works if the disposal of such waste is not in violation of Federal, State, or local law.

"(3) Other exemptions to apply.—The exemptions provided by subsections (a) and (b) of section 4672 shall apply to the tax imposed by subsection (a).

"(4) Exemptions under regulations; application of lower rate.—The Secretary may prescribe regulations which provide exemptions from the tax imposed by subsection (a) (or the application of a lower rate) which are not inconsistent with the purposes of this section.

"(e) Generator.—For purposes of this section, the term 'generator' means the person whose act or process produces the hazardous waste.

"(f) TERMINATION.—No tax shall be imposed by this section on waste generated after September 30, 1990.

"SEC. 4675. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) HAZARDOUS WASTE.—The term 'hazardous waste' means any waste which is listed or identified as of the date of the enactment of the Superfund Revenue Act of 1985 under section 3001 of the Solid Waste Disposal Act. Rainwater shall not be treated as hazardous waste unless mixed with hazardous waste (as defined in the preceding sentence).

"(2) QUALIFIED HAZARDOUS WASTE MANAGEMENT UNIT.—The term 'qualified hazardous waste management unit' means the specified area of land or structure—

"(A) which isolates the hazardous wastes within a qualified hazardous waste facility, and

"(B) which is subject to the requirements for obtaining interim status or a final permit under subtitle C of the Solid Waste Disposal Act.

"(3) QUALIFIED HAZARDOUS WASTE MANAGEMENT FACILITY.—The term 'qualified hazardous waste management facility' means any facility, as defined under subtitle C of the Solid Waste Disposal Act, which has received a permit or is accorded interim status under—

"(A) section 3005 of the Solid Waste Disposal Act, or

"(B) a State program authorized under section 3006 of such Act.

"(4) OCEAN DISPOSAL.—The term 'ocean disposal' means the incineration or dumping of hazardous waste over or into ocean waters or the waters described in section 101(b) of the Marine Protection, Research, and Sanctuaries Act of 1972, pursuant to section 102 of such Act.

"(5) DEFINITIONS RELATING TO AMOUNT OF TAX.—

"(A) LAND DISPOSAL.—The term 'land disposal' means a taxable event described in section 4671(a)(1) with respect to a qualified hazardous waste management unit which is a landfill, surface impoundment, waste pile, or land treatment unit.

"(B) LANDFILL, ETC.—For purposes of subparagraph (A), the terms 'landfill', 'surface impoundment', 'waste pile', and 'land treatment unit' have the respective meanings given such terms in regulations prescribed by the Administrator pursuant to sections 3004 and 3005 of the Solid Waste Disposal Act.

"(C) OTHER TAXABLE EVENT.—The term 'any other taxable event' means—

"(i) a taxable event described in section 4671(a)(1) which is not land disposal, and

"(ii) a taxable event described in paragraph (2) or (3) of section 4671(a).

"(6) WASTE WATER TREATMENT UNIT.—The term 'waste water treatment unit' means any qualified hazardous waste management unit which is an integral and necessary part of a treatment system—

"(A) for which a permit is required under section 402 of the Clean Water Act,

"(B) which is subject to pretreatment standards under subsection (b) or (c) of section 307 of the Clean Water Act, or

"(C) which is a zero discharge treatment system—

"(i) which, if the system discharged into navigable waters, would comply with effluent limitation guidelines prescribed under paragraph (2) or (4) of section 304(b) of the Clean Water Act,

"(ii) which, if the system discharged into a publicly owned treatment works, would comply with the pretreatment standards described in subparagraph (B), or

"(iii) if no such guidelines or standards have been prescribed, which employs biological treatment.

The term 'waste water treatment unit' shall not include any qualified hazardous waste management unit which receives for storage or final disposition concentrated treatment residues resulting from wastewater treatment.

"(7) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(8) UNITED STATES.—The term 'United States' has the meaning given such term by section 4612(a)(4).

"(9) TON.—The term 'ton' means 2,000 pounds.

"(10) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by this subchapter shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) TREATMENT OF CONTAINERS, ETC. WHICH ARE RELATED TO INJECTION UNITS.—For purposes of this subchapter—

"(1) any container, tank, or surface impoundment which, with respect to any hazardous waste, is used to treat or store such waste before underground injection of such waste (whether or not the waste when injected is hazardous waste) into an injection well, and

"(2) the injection well into which such waste is injected,

shall be treated as a single hazardous waste management unit.

"(c) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by this subchapter."

(b) INFORMATION REPORTING REQUIREMENT.—

(1) IN GENERAL.—Subpart A of part III of subchapter A of chapter 61 of such Code is amended by inserting after section 6039D the following new section:

"SEC. 6039E. INFORMATION WITH RESPECT TO MANAGEMENT TAX ON HAZARDOUS WASTE.

"Each person on whom a tax is imposed under subchapter C of chapter 38 shall (at such time and in such manner as the Secretary may require) submit to the Secretary such information as the Secretary may require, including information which such person is required to provide the Administrator of the Environmental Protection Agency under the Solid Waste Disposal Act. To the extent provided in regulations prescribed by the Secretary, the preceding sentence shall also apply to persons not described therein with respect to information which the Secretary determines is necessary or appropriate to the administration of such subchapter."

(2) Penalty.—Subchapter B of chapter 68 of such Code (relating to assessable penalties) is amended by redesignating section 6708 (relating to mortgage credit certificates) as section 6709 and by adding at the end thereof the following new section:

"SEC. 6710. FAILURE TO PROVIDE INFORMATION WITH RESPECT TO MANAGEMENT TAX ON HAZARDOUS WASTE.

"(a) In General.—Any person who fails to meet any requirement imposed by section 6039E shall pay a penalty of $100 for each day during which such failure continues, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection with respect to any failure shall not exceed $50,000.

"(b) Penalty in Addition to Other Penalties.—The penalty imposed by this section shall be in addition to any other penalty provided by law."

(3) Conforming amendments.—

(A) The table of sections for subpart A of part III of subchapter A of chapter 61 of such Code is amended by inserting after the item relating to section 6039D the following new item:

"Sec. 6039E. Information with respect to management tax on hazardous waste."

(B) The table of sections for subchapter B of chapter 68 of such Code is amended by redesignating the item relating to mortgage credit certificates as section 6709 and by adding at the end thereof the following new item:

"Sec. 6710. Failure to provide information with respect to management tax on hazardous waste."

(c) Penalty for Negligence To Apply to Environmental Taxes.—Section 6653 of such Code (relating to failure to pay tax) is amended by adding at the end thereof the following new subsection:

"(i) Negligence Penalty To Apply to Environmental Taxes.—For purposes of applying paragraphs (1) and (2) of subsection (a), paragraph (1) of subsection (a) shall be treated as including a reference to underpayments (as defined in subsection (c)) of tax imposed by chapter 38 (relating to environmental taxes)."

(d) Clerical Amendment.—The table of subchapters for chapter 38 of such Code is amended by adding after the item relating to subchapter B the following new item:

"Subchapter C. Hazardous waste management tax."

(e) Effective Dates.—

(1) In general.—The amendments made by this section shall take effect on January 1, 1986.

(2) Backup tax on generator.—Section 4674 of the Internal Revenue Code of 1954 (relating to backup tax on generator), as added by this section, shall apply to waste generated after December 31, 1986.

SEC. 516. TAX ON CERTAIN IMPORTED SUBSTANCES DERIVED FROM TAXABLE CHEMICALS.

(a) General Rule.—Chapter 38 of the Internal Revenue Code of 1954 is amended by adding after subchapter C the following new subchapter:

"Subchapter D—Tax on Certain Imported Substances

"Sec. 4677. Imposition of tax.
"Sec. 4678. Definitions and special rules.

"SEC. 4677. IMPOSITION OF TAX.

"(a) General Rule.—There is hereby imposed a tax on any taxable substance sold or used by the importer thereof.

"(b) Amount of Tax.—

"(1) In general.—Except as provided in paragraph (2), the amount of the tax imposed by subsection (a) with respect to any taxable substance shall be the amount of the tax which would have been imposed by section 4661 on the taxable chemicals or petroleum used as materials or process fuel in the manufacture or production of such substance if such taxable chemicals or petroleum had been sold in the United States for use in the manufacture or production of such taxable substance.

"(2) Rate where importer does not furnish information to secretary.—If the importer does not furnish to the Secretary (at such time and in such manner as the Secretary shall prescribe) sufficient information to determine under paragraph (1) the amount of the tax imposed by subsection (a) on any taxable substance, the amount of the tax imposed on such taxable substance shall be 5 percent of the appraised value of such substance as of the time such substance was entered into the United States for consumption, use, or warehousing.

"(c) Exemptions for Substances Taxed Under Sections 4611 and 4661.—No tax shall be imposed by this section on the sale or use of any substance if tax is imposed on such sale or use under section 4611 or 4661.

"(d) Termination.—The taxes imposed by this section shall not apply after September 30, 1990.

"SEC. 4678. DEFINITIONS AND SPECIAL RULES.

"(a) Taxable Substance.—For purposes of this subchapter—

"(1) In general.—The term 'taxable substance' means any substance which, at the time of sale or use by the importer, is listed as a taxable substance by the Secretary for purposes of this subchapter.

"(2) Determination of substances on list.—A substance shall be listed under paragraph (1) if—

"(A) the substance is contained in the list under paragraph (3), or

"(B) the Secretary determines, in consultation with the Administrator of the Environmental Protection Agency and the Commissioner of Customs, that such substance generally has more than 50 percent of its value derived (as materials or as process fuel) from taxable chemicals or petroleum (determined on the basis of the predominant method of production).

"(3) INITIAL LIST OF TAXABLE SUBSTANCES.—

Cumene
Styrene
Ammonium nitrate
Nickel oxide
Isopropyl alcohol
Ethylene glycol
Vinyl chloride
Polyethylene resins, total
Polybutadiene
Styrene-butadiene, latex
Styrene-butadiene, snpf
Synthetic rubber, not containing fillers
Urea,
Ferronickel
Ferrochromium nov 3 pct
Ferrochrome ov 3 pct carbon
Unwrought nickel
Nickel waste and scrap
Wrought nickel rods and wire
Nickel powders
Phenolic resins
Polyvinylchloride resins
Polystyrene resins and copolymers
Ethyl alcohol for nonbeverage use
Methylene chloride
Polypropylene
Propylene glycol
Formaldehyde
Acetone
Propylene oxide
Polypropylene resins
Ethylene oxide
Ethylene dichloride
Cyclohexane
Isophthalic acid
Maleic anhydride
Phthalic anhydride
Ethyl methyl ketone
Chloroform
Carbon tetrachloride
Chromic acid
Hydrogen peroxide
Polystyrene homopolymer resins
Melamine
Acrylic and methacrylic acid resins
Vinyl resins
Vinyl resins, NSPF.

"(4) MODIFICATIONS TO LIST.—The Secretary may add or remove substances from the list under paragraph (2) (including items listed by reason of paragraph (3)) as necessary to carry out the purposes of this subchapter.

"(b) OTHER DEFINITIONS.—For purposes of this subchapter—

"(1) IMPORTER.—The term 'importer' means the person entering the taxable substance for consumption, use, or warehousing.

"(2) TAXABLE CHEMICALS; UNITED STATES.—The terms 'taxable chemical' and 'United States' have the respective meanings given such terms by section 4662(a).

"(c) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4677."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 38 of such Code is amended by adding after the item relating to subchapter C the following new item:

"Subchapter D. Tax on certain imported substances."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 517. HAZARDOUS SUBSTANCE SUPERFUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9504 the following new section:

"SEC. 9505. HAZARDOUS SUBSTANCE SUPERFUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Hazardous Substance Superfund' (hereinafter in this section referred to as the 'Superfund'), consisting of such amounts as may be—

"(1) appropriated to the Superfund as provided in this section,

"(2) appropriated to the Superfund pursuant to section 517(b) of the Superfund Revenue Act of 1985, or

"(3) credited to the Superfund as provided in section 9602(b).

"(b) TRANSFERS TO SUPERFUND.—There are hereby appropriated to the Superfund amounts equivalent to—

"(1) the taxes received in the Treasury under section 4611, 4661, 4671, 4674, or 4677 (relating to environmental taxes),

"(2) amounts recovered on behalf of the Superfund under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this section referred to as 'CERCLA'),

"(3) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

"(4) penalties assessed under title I of CERCLA, and

"(5) punitive damages under section 107(c)(3) of CERCLA.

"(c) EXPENDITURES FROM SUPERFUND.—

"(1) IN GENERAL.—Amounts in the Superfund shall be available, as provided in appropriation Acts, only for purposes of making expenditures—

"(A) to carry out the purposes of paragraphs (1), (2), (4), and (5) of section 111(a) of CERCLA as in effect on the date of the enactment of the Superfund Amendments of 1985, or

"(B) hereafter authorized by a law which authorizes the expenditure out of the Superfund for a general purpose covered by paragraphs (1), (2), (4), and (5) of such section 111(a) (as so in effect).

"(2) Exception for certain transfers, etc. of hazardous substances.—Amounts in the Superfund shall not be available for any transfer or disposal which could not be made but for section 118(d) of the Superfund Amendments of 1985, as in effect on the date of the enactment thereof.

"(d) Authority to Borrow.—

"(1) In general.—There are authorized to be appropriated to the Superfund, as repayable advances, such sums as may be necessary to carry out the purposes of the Superfund.

"(2) Repayment of advances.—

"(A) In general.—Advances made pursuant to this subsection shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Superfund.

"(B) Final repayment.—No advance shall be made to the Superfund after September 30, 1990, and all advances to such Fund shall be repaid on or before such date.

"(C) Rate of interest.—Interest on advances made pursuant to this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

"(e) Liability of United States Limited to Amount in Trust Fund.—

"(1) General rule.—Any claim filed against the Superfund may be paid only out of the Superfund.

"(2) Coordination with other provisions.—Nothing in CERCLA or the Superfund Amendments of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Superfund.

"(3) Order in which unpaid claims are to be paid.—If at any time the Superfund has insufficient funds to pay all of the claims payable out of the Superfund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined."

(b) Authorization of Appropriations.—There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund for fiscal year—

(1) 1986, $316,600,000,

(2) 1987, $316,600,000,

(3) 1988, $316,600,000,

(4) 1989, $316,600,000, and

(5) 1990, $316,600,000,

plus for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Act of 1980, as in effect before its repeal) as has not been appropriated before the beginning of the fiscal year involved.

(c) Conforming Amendments.—

(1) Subtitle B of the Hazardous Substance Response Revenue Act of 1980 (relating to establishment of Hazardous Substance Response Trust Fund) is hereby repealed.

(2) Paragraph (11) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"(11) 'Fund' or 'Trust Fund' means the Hazardous Substance Superfund established by section 9505 of the Internal Revenue Code of 1954;".

(d) Clerical Amendment.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9504 the following new item:

"Sec. 9505. Hazardous Substance Superfund."

(e) Effective Date.—

(1) In general.—The amendments made by this section shall take effect on November 1, 1985.

(2) Superfund treated as continuation of old trust fund.—The Hazardous Substance Superfund established by the amendments made by this section shall be treated for all purposes of law as a continuation of the Hazardous Substance Response Trust Fund established by section 221 of the Hazardous Substance Response Revenue Act of 1980. Any reference in any law to the Hazardous Substance Response Trust Fund established by such section 221 shall be deemed to include (wherever appropriate) a reference to the Hazardous Substance Superfund established by the amendments made by this section.

PART II—LEAKING UNDERGROUND STORAGE TANK TRUST FUND AND ITS REVENUE SOURCES

SEC. 521. ADDITIONAL TAXES ON GASOLINE, DIESEL FUEL, SPECIAL MOTOR FUELS, FUELS USED IN AVIATION, AND FUELS USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.

(a) General Rule.—

(1) Gasoline.—Section 4081 of the Internal Revenue Code of 1954 (relating to imposition of tax on gasoline) is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a) Tax To Fund Highway Program.—

"(1) In general.—There is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 9 cents a gallon.

"(2) Termination.—On and after October 1, 1988, the tax imposed by paragraph (1) shall not apply.

"(b) Additional Tax To Fund Leaking Underground Storage Tank Trust Fund.—

"(1) In general.—In addition to the tax imposed by subsection (a), there is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 0.2 cents a gallon.

"(2) TERMINATION.—

"(A) IN GENERAL.—The tax imposed by paragraph (1) shall not apply after the earlier of—

"(i) September 30, 1990, or

"(ii) the last day of the termination month.

"(B) TERMINATION MONTH.—For purposes of subparagraph (A), the termination month is the 1st month as of the close of which the Secretary estimates that the net revenues from the taxes imposed by paragraph (1) and section 4041(d) are at least $850,000,000.

"(C) NET REVENUES.—For purposes of subparagraph (B), the term 'net revenues' means the excess of gross revenues over amounts payable by reason of section 9506(c)(2) (relating to transfer from Leaking Underground Storage Tank Trust Fund for certain repayments and credits)."

(2) DIESEL AND SPECIAL MOTOR FUELS; FUELS USED IN AVIATION.—Section 4041 of such Code (relating to tax on special fuels) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) ADDITIONAL TAXES TO FUND LEAKING UNDERGROUND STORAGE TANK TRUST FUND.—

"(1) LIQUIDS OTHER THAN GASOLINE USED IN MOTOR VEHICLES, MOTORBOATS, OR TRAINS.—In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.2 cents a gallon on benzol, benzene, naphtha, liquefied petroleum gas, casing head and natural gasoline; or any other liquid (other than kerosene, gas oil, or fuel oil, or any product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a motor vehicle, motorboat, or train for use as a fuel in such motor vehicle, motorboat, or train, or

"(B) used by any person as a fuel in a motor vehicle, motorboat, or train unless there was a taxable sale of such liquid under subparagraph (A).

"(2) LIQUIDS USED IN AVIATION.—In addition to the taxes imposed by subsection (c) and section 4081, there is hereby imposed a tax of 0.2 cents a gallon on any liquid—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft, or

"(B) used by any person as a fuel in an aircraft unless there was a taxable sale of such liquid under subparagraph (A).

The tax imposed by this paragraph shall not apply to any product taxable under section 4081 which is used as a fuel in an aircraft other than in noncommercial aviation.

"(3) TERMINATION.—The taxes imposed by this subsection shall not apply during any period during which no tax is imposed by section 4081(b)."

(3) FUEL USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.—Subsection (b) of section 4042 of such Code (relating to amount of tax on fuel used in commercial transportation on inland waterways) is amended to read as follows:

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by subsection (a) is the sum of—

"(A) the Inland Waterways Trust Fund financing rate, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Inland Waterways Trust Fund financing rate is 10 cents a gallon, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.2 cents a gallon.

"(3) EXCEPTION FOR FUEL TAXED UNDER SECTION 4041(d).—The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply to the use of any fuel if tax under section 4041(d) was imposed on the sale of such fuel or is imposed on such use.

"(4) TERMINATION OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply during any period during which no tax is imposed by section 4081(b)."

(b) ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND, AIRPORT AND AIRWAY TRUST FUND, AND INLAND WATERWAYS TRUST FUND.—

(1) HIGHWAY TRUST FUND.—

(A) IN GENERAL.—Subsection (b) of section 9503 of such Code (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes) is amended by adding at the end thereof the following new paragraph:

"(4) CERTAIN ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.—For purposes of paragraphs (1) and (2), the taxes imposed by sections 4041(d) and 4081(b) shall not be taken into account."

(B) CONFORMING AMENDMENT.—Subparagraph (D) of section 9503(c)(4) of such Code (defining motorboat fuel taxes) is amended by striking out "section 4081" and inserting in lieu thereof "section 4081(a)".

(2) AIRPORT AND AIRWAY TRUST FUND.—Subsection (b) of section 9502 of such Code (relating to transfer to Airport and Airway Trust Fund of amounts equivalent to certain taxes) is amended—

(A) by striking out "subsections (c) and (d) of section 4041" in paragraph (1) and inserting in lieu thereof "subsections (c) and (e) of section 4041", and

(B) by striking out "section 4081" in paragraph (2) and inserting in lieu thereof "section 4081(a)".

(3) INLAND WATERWAYS TRUST FUND.—Paragraph (1) of section 203(b) of the Inland Waterways Revenue Act of 1978 is amended by adding at the end thereof the following new sentence: "The preceding sentence shall apply only to so much of such taxes as are attributable to the Inland Waterways Trust Fund financing rate under section 4042(b)."

(c) REPAYMENTS FOR GASOLINE USED ON FARMS, ETC.—

(1) GASOLINE USED ON FARMS.—Subsection

(h) of section 6420 of such Code (relating to termination) is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081(b), this section".

(2) Gasoline used for certain nonhighway purposes or by local transit systems.—

(A) Termination not to apply to additional 0.2 cent tax.—Subsection (h) of section 6421 of such Code (relating to effective date) is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081(b), this section".

(B) Repayment of additional tax for off-highway business use to apply only to certain vessels.—Subsection (e) of section 6421 of such Code is amended by adding at the end thereof the following new paragraph:

"(4) Section not to apply to certain off-highway business uses with respect to the tax imposed by section 4081(b).—This section shall not apply with respect to the tax imposed by section 4081(b) on gasoline used in any off-highway business use other than use in a vessel employed in the fisheries or in the whaling business."

(3) Fuels used for nontaxable purposes.—.

(A) Subsection (m) of section 6427 of such Code (relating to termination) is amended by striking out "Subsections" and inserting in lieu thereof "Except with respect to taxes imposed by sections 4041(d) and 4081(b), subsections".

(B) Section 6427 of such Code is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) Payments For Taxes Imposed by Section 4041(d).—For purposes of subsections (a), (b), and (c), the taxes imposed by section 4041(d) shall be treated as imposed by section 4041(a)."

(C) Paragraph (1) of section 6427(*f*) of such Code (relating to gasoline used to produce certain alcohol fuels) is amended by striking out "section 4081" and inserting in lieu thereof "section 4081(a)".

(d) Continuation of Certain Exemptions From Additional Taxes, Etc.—

(1) Subsection (b) of section 4041 of such Code (relating to exemption for off-highway business use; exemption for qualified methanol and ethanol fuel) is amended by adding at the end thereof the following new paragraph:

"(3) Coordination with taxes imposed by subsection (d).—

"(A) In general.—Except as otherwise provided in this paragraph, rules similar to the rules of paragraphs (1) and (2) shall apply with respect to the taxes imposed by subsection (d).

"(B) Limitation on exemption for off-highway business use.—For purposes of subparagraph (A), paragraph (1) shall apply only with respect to off-highway business use in a vessel employed in the fisheries or in the whaling business.

"(C) Termination not to apply.—Subparagraph (C) of paragraph (2) shall not apply with respect to the taxes imposed by subsection (d)."

(2) Paragraph (3) of section 4041(f) of such Code (relating to exemption for farm use) is amended by striking out "On and after" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), on and after".

(3) The last sentence of section 4041(g) of such Code (relating to other exemptions) is amended by striking out "Paragraphs" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), paragraphs".

(4) The last sentence of section 4221(a) of such Code (relating to certain tax-free sales) is amended by striking out "4081" and inserting in lieu thereof "4081(a)".

(5) Paragraph (2) of section 6416(b) of such Code is amended by inserting "or under paragraph (1)(A) or (2)(A) of section 4041(d)" after "section 4041(a)".

(e) Effective Date.—The amendments made by this section shall take effect on November 1, 1985.

SEC. 522. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

(a) In General.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9505 the following new section:

"SEC. 9506. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

"(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the 'Leaking Underground Storage Tank Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) Transfers to Trust Fund.—There are hereby appropriated to the Leaking Underground Storage Tank Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under sections 4041(d) and 4081(b) (relating to additional taxes on motor fuels and gasoline),

"(2) taxes received in the Treasury under section 4042 to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4042(b), and

"(3) amounts collected under section 9003(h)(6) of the Solid Waste Disposal Act.

"(c) Expenditures.—

"(1) In general.—Except as provided in paragraph (2), amounts in the Leaking Underground Storage Tank Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures to carry out section 9003(h) of the Solid Waste Disposal Act as in effect on the date of the enactment of the Superfund Amendments of 1985.

"(2) Transfers from trust fund for certain repayments and credits.—

"(A) In general.—The Secretary shall pay from time to time from the Leaking Underground Storage Tank Trust Fund into the general fund of the Treasury amounts equivalent to—

"(i) amounts paid under—

"(I) section 6420 (relating to amounts paid in respect of gasoline used on farms),

"(II) section 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems), and

"(III) section 6427 (relating to fuels not used for taxable purposes), and

"(ii) credits allowed under section 34,

with respect to the taxes imposed by sections 4041(d) and 4081(b).

"(B) TRANSFERS BASED ON ESTIMATES.—Transfers under subparagraph (A) shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(d) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Leaking Underground Storage Tank Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or the Superfund Amendments of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Leaking Underground Storage Tank Trust Fund.

"(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Leaking Underground Storage Tank Trust Fund has insufficient funds to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9505 the following new item:

"Sec. 9506. Leaking Underground Storage Tank Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on November 1, 1985.

PART III—OIL SPILL LIABILITY TRUST FUND AND ITS REVENUE SOURCES

SEC. 531. INCREASE IN ENVIRONMENTAL TAX ON PETROLEUM.

(a) IN GENERAL.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum), as amended by section 511 of this Act, are each amended by striking out "of 11.9 cents a barrel" and inserting in lieu thereof "at the rate specified in subsection (c)".

(b) INCREASE IN TAX.—Section 4611 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the taxes imposed by this section is the sum of—

"(A) the Hazardous Substance Superfund financing rate, and

"(B) the Oil Spill Liability Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Hazardous Substance Superfund financing rate is 11.9 cents a barrel, and

"(B) the Oil Spill Liability Trust Fund financing rate is 1.3 cents a barrel."

(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—Section 4612 of such Code (relating to definitions and special rules) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—There shall be allowed as a credit against so much of the tax imposed by section 4611 as is attributable to the oil spill rate for any period the excess of the aggregate amount paid by the taxpayer into the Deepwater Port Liability Trust Fund and the Offshore Oil Pollution Compensation Fund over the amount of such payments taken into account under this subsection for all prior periods."

(d) CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 4611 of such Code (relating to application of taxes), as redesignated by subsection (b), is amended to read as follows:

"(e) APPLICATION OF TAXES.—

"(1) SUPERFUND RATE.—The Hazardous Substance Superfund financing rate under subsection (c) shall apply after October 31, 1985, and before October 1, 1990.

"(2) OIL SPILL RATE.—The Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after December 31, 1985, and before October 1, 1990."

(2) Subsection (d) of section 4661 of such Code (relating to termination of tax on certain chemicals) is amended to read as follows:

"(d) APPLICATION OF TAXES.—The tax imposed by this section shall apply after October 31, 1985, and before October 1, 1990."

(3) Subsection (b) of section 9505 of such Code (relating to transfers to Superfund) is amended by adding at the end thereof the following:

"In the case of the tax imposed by section 4611, paragraph (1) shall apply only to so much of such tax as is attributable to the Superfund financing rate under section 4611(c)."

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1986.

SEC. 532. OIL SPILL LIABILITY TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9506 the following new section:

"SEC. 9507. OIL SPILL LIABILITY TRUST FUND.

"(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the 'Oil Spill Liability Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) Transfers to Trust Fund.—There are hereby appropriated to the Oil Spill Liability Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under section 4611 (relating to environmental tax on petroleum) to the extent attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c),

"(2) amounts recovered, collected, or received under subtitle A of the Comprehensive Oil Pollution Liability and Compensation Act,

"(3) amounts remaining on the date of the enactment of this section in the Deep Water Port Liability Fund established by section 18(f) of the Deep Water Port Act of 1974,

"(4) amounts remaining on the date of the enactment of this section in the Offshore Oil Pollution Compensation Fund established under section 302 of the Outer Continental Shelf Lands Act Amendments of 1978, and

"(5) amounts credited to such trust fund under section 311(s) of the Federal Water Pollution Control Act.

"(c) Expenditures.—

"(1) General expenditure purposes.—

"(A) In general.—Amounts in the Oil Spill Liability Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures for—

"(i) the payment of removal costs described in section 401(24)(A) of the Comprehensive Oil Pollution Liability and Compensation Act,

"(ii) the payment of claims under the Comprehensive Oil Pollution Liability and Compensation Act for damage which is not otherwise compensated,

"(iii) carrying out subsections (c), (d), (i), and (l) of section 311 of the Federal Water Pollution Control Act with respect to any discharge of oil (as defined in such section),

"(iv) carrying out section 5 of the Intervention on the High Seas Act relating to oil pollution or the substantial threat of oil pollution,

"(v) the payment of all expenses of administration incurred by the Federal Government under the Comprehensive Oil Pollution Liability and Compensation Act, and

"(vi) the payment of contributions to the International Fund under section 464 of such Act.

"(B) Special rules.—

"(i) Payments to governments only for removal costs.—Amounts shall be available under subparagraph (A) for payments to any government only for removal costs and administrative expenses related to removal costs.

"(ii) Restrictions on contributions to international fund.—Under regulations prescribed by the Secretary, amounts shall be available under subparagraph (A) with respect to any contribution to the International Fund only in proportion to the portion of such fund used for a purpose for which amounts may be paid from the Oil Spill Liability Trust Fund.

"(iii) References to other acts.—Any reference in any clause of subparagraph (A) to any Act shall be treated as a reference to such Act as in effect on the date of the enactment of this section.

"(2) Limitations on expenditures.—

"(A) $200,000,000 per incident.—The maximum amount which may be paid from the Oil Spill Liability Trust Fund with respect to any single incident shall not exceed $200,000,000.

"(B) $30,000,000 minimum balance.—Except in the case of payments described in paragraph (1)(A), a payment may be made from such Trust Fund only if the amount in such Trust Fund after such payment will not be less than $30,000,000.

"(d) Authority to Borrow.—

"(1) In general.—There are authorized to be appropriated to the Oil Spill Liability Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

"(2) Limitation on amount outstanding.—The maximum aggregate amount of repayable advances to the Oil Spill Liability Trust Fund which is outstanding at any one time shall not exceed $300,000,000.

"(3) Repayment of advances.—Rules similar to the rules of paragraph (2) of section 9505(d) shall apply for purposes of this subsection.

"(e) Liability of the United States Limited to Amount in Trust Fund.—

"(1) General rule.—Any claim filed against the Oil Spill Liability Trust Fund may be paid only out of such Trust Fund.

"(2) Coordination with other provisions.—Nothing in the Comprehensive Oil Pollution Liability and Compensation Act or the Superfund Amendments of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Oil Spill Liability Trust Fund.

"(f) Order in Which Unpaid Claims Are To Be Paid.—If at any time the Oil Spill Liability Trust Fund has insufficient funds (or is unable by reason of subsection (c)(2)) to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under such subsections, be paid in full in the order in which they were finally determined."

(b) Clerical Amendment.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9506 the following new item:

"Sec. 9507. Oil Spill Liability Trust Fund."

(c) Effective Date.—The amendments made by this section shall take effect on January 1, 1986.

PART IV—STUDIES

SEC. 541. STUDY OF IMPACT OF WASTE MANAGEMENT TAX ON DOMESTIC MANUFACTURERS.

(a) General Rule.—The Secretary of the Treasury or his delegate shall conduct a study on the effects of the tax imposed by section 4671 of the Internal Revenue Code of 1954 on the ability of domestic manufacturers to compete in international trade.

(b) Report.—Not later than July 1, 1986, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under subsection (a). Such report shall include recommendations to minimize the trade impact of such tax and there shall be considered, in making such recommendations, a waste management tax export credit, an import equalization fee, and a maximum amount of tax with respect to hazardous waste generated by economically distressed industries.

SEC. 542. STUDY OF LEAD POISONING.

(a) In General.—The Administrator of the Agency for Toxic Substances and Disease Registry shall, in consultation with the Administrator of the Environmental Protection Agency and other officials as appropriate, not later than March 1, 1986, submit to the Committee on Environment and Public Works, and the Committee on Finance, of the Senate and the Committee on Energy and Commerce, and the Committee on Ways and Means, of the House of Representatives, a report on the nature and extent of lead poisoning in children from environmental sources. Such report shall include, at a minimum, the following information:

(1) an estimate of the total number of children, arrayed according to Standard Metropolitan Statistical Area or other appropriate geographic unit, exposed to environmental sources of lead at concentrations sufficient to cause adverse health effects;

(2) an estimate of the total number of children exposed to environmental sources of lead arrayed according to source or source types;

(3) a statement of the long term consequences for public health of unabated exposures to environmental sources of lead, including (but not limited to) diminution in intelligence and increases in morbidity and mortality; and

(4) methods and alternatives available for reducing exposures of children to environmental sources of lead.

(b) Evaluation of Specific Sites.—Such report shall also score and evaluate specific sites at which children are known to be exposed to environmental sources of lead due to releases, utilizing the Hazard Ranking system of the National Priorities List.

(c) Authorization From Superfund.—There are authorized to be appropriated from the Hazardous Substance Superfund such sums as may be necessary to prepare and submit the report required by this section.

PART V—COORDINATION WITH OTHER PROVISIONS OF THIS ACT

SEC. 551. COORDINATION.

(a) In General.—Notwithstanding any provision of this Act not contained in this title, any provision of this Act (not contained in this title) which—

(1) imposes any tax, premium, or fee,

(2) establishes any trust fund, or

(3) authorizes amounts to be expended from any trust fund which are not also authorized by this title,

shall have no force or effect.

(b) Exception for Payments From Trans-Alaska Pipeline Liability Fund.—Subsection (a) shall not apply to amounts rebated to owners of oil in accordance with section 442(a) of the Comprehensive Oil Pollution Liability and Compensation Act.

In the table of contents of the bill, strike out the items relating to title V and insert in lieu thereof the following:

Title V—Amendments of the Internal Revenue Code of 1954

Sec. 501. Short title.

Part I—Superfund and Its Revenue Sources

Sec. 511. Extension of environmental taxes.
Sec. 512. Increase in tax on petroleum.
Sec. 513. Increase in tax on certain chemicals.
Sec. 514. Repeal of post-closure tax and trust fund.
Sec. 515. Waste management tax.
Sec. 516. Tax on certain imported substances derived from taxable chemicals.
Sec. 517. Hazardous Substance Superfund.

Part II—Leaking Underground Storage Tank Trust Fund and Its Revenue Sources

Sec. 521. Additional taxes on gasoline, diesel fuel, special motor fuels, fuels used in aviation, and fuels used in commercial transportation on inland waterways.
Sec. 522. Leaking Underground Storage Tank Trust Fund.

Part III—Oil Spill Liability Trust Fund and Its Revenue Sources

Sec. 531. Increase in environmental tax on petroleum.
Sec. 532. Oil Spill Liability Trust Fund.

Part IV—Studies

Sec. 541. Study of impact of waste management tax on domestic manufacturers.
Sec. 542. Study of lead poisoning.

Part V—Coordination With Other Provisions of This Act

Sec. 551. Coordination.

Mr. DOWNEY of New York (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN pro tempore. Pursuant to the provisions of House Resolution 331 and the unanimous-consent agreement of the committee on Friday, December 6, 1985, the gentleman from New York [Mr. Downey] will be recognized for 7½ minutes and the gentleman from Tennessee [Mr. Duncan] will be recognized for 7½ minutes.

The Chair recognizes the gentleman from New York [Mr. Downey].

Mr. DOWNEY of New York. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the parliamentary situation is as follows: The amendment that the gentleman from Minnesota [Mr. Frenzel] and I have offered will preserve the notion of the polluters-pay concept under Superfund. If our amendment is not adopted, the Ways and Means provision passed by the committee, 18 to 17, including a value-added tax, will be the House position.

That is exactly the same provision as the other body has. If we fail to adopt my amendment, Members will go on record as having supported a value-added tax. There will be no room for the House conferees to work out any other tax.

What the gentleman from Minnesota [Mr. Frenzel] and I have attempted to do was take the lessons of last year, when a Superfund tax of about the same size passed 322 to 33. In that bill, there was a $5 billion chemical feedstock tax.

Under our proposal, there is a $2 billion chemical feedstock tax. There was a $2.7 billion crude oil tax; under our bill, there is a $3.1 billion crude oil tax.

It preserves the notion that the people who are responsible for waste, generating and polluting, will pay the cost of Superfund. That is the first most important principle.

The second equally important principle is it kills the value-added tax. If there ever was an idea whose time has not come, it is financing the problems of Superfund with a value-added tax which all consumers will pay.

Even if you thought a value-added tax was a good idea, this is a bad one. It exempts 10 million dollars' worth of business from people who do polluting. It does not exempt drugs and prosthetic devices as European VAT's do for the elderly and the poor.

It is a regressive tax and it is an enormous mistake.

Mr. DUNCAN. Mr. Chairman, I yield 30 seconds to the gentleman from Texas [Mr. Pickle].

Mr. PICKLE. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, the gentleman from New York [Mr. Downey] says the polluters ought to pay. Yet under his provision, he lets the chemical industry and the oil industry pay all of the tax while allowing all other industries off scot-free. This is in spite of the cold, hard facts that show virtually every manufacturing industry has been a responsible party at Superfund sites.

He increases the crude oil tax now from 0.79 a barrel to 12 cents per barrel. The Ways and Means Committee increased that tax to 3.8 cents per barrel. We made a fourfold increase, so the oil industry will still pay for plenty of the cleanup.

The gentleman from New York [Mr. Downey] makes a 15-fold tax increase to oil companies. That is not fair and it abandons the principle of "the polluter should pay."

□ 1620

Mr. DOWNEY of New York. Mr. Chairman, I yield 30 seconds to the gentleman from Oregon [Mr. Denny Smith].

(Mr. DENNY SMITH asked and was given permission to revise and extend his remarks.)

Mr. DENNY SMITH. Mr. Chairman, I rise in support of the Downey-Frenzel amendment and in opposition to a national sales tax.

I'm sure you'll hear many speeches today, so let me be brief.

The value-added tax is a hidden tax, which, once enacted is here to stay. Even if the need for Superfund ceases to exist, I have no doubt that the VAT would simply continue to provide the EPA and other agencies with funding for questionable projects.

Imposition of a value added tax substitutes a "consumer pays" principle for the "polluter pays" principle which has governed Superfund since its inception.

The value added tax is a complex tax which will require a huge bureaucracy and bureaucratic budget to implement.

The VAT places the machinery in motion and greases the wheels for a national sales tax. To paraphrase Will Rogers, I've never met a sales tax I liked—and I'm sure most American's haven't, either. Just this fall, every State official in Oregon from the Governor to the local dogcatcher campaigned for a State sales tax proposal and the voters defeated it by a 4-to-1 margin.

The President will veto any Superfund bill containing a VAT should that occur, it will be even longer before resumption of Superfund revenue collections begin and even longer before sites can be cleaned up.

There is still much work for Superfund to accomplish.

Let's not saddle the bill with a provision that will delay clean up procedures.

Let's not saddle this Nation's businesses with an unfair tax.

And let's not saddle American citizens and consumers with a supertax that will be hidden in the price of all manufactured goods.

I urge my colleagues to vote for the Downey-Frenzel amendment.

Mr. DUNCAN. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Connecticut [Mrs. JOHNSON].

(Mrs. JOHNSON asked and was given permission to revise and extend her remarks.)

Mrs. JOHNSON. Mr. Chairman, I rise in reluctant support of the Downey amendment and wish to explain my distaste for the tax proposals before us.

I oppose the Ways and Means broad-based value-added tax on manufacturers because in an intensively competitive global economy, such a tax will increase our competitive disadvantage in international markets, in my estimation.

Yet, the Downey-Frenzel amendment depends too heavily on feedstock taxes and will have a devastating effect on the domestic petrochemical industry, without which the United States of America cannot continue to enjoy economic growth and technological leadership in today's world and tomorrow's trade battles.

I strongly support the imposition of a reasonable waste end tax, a more realistic reliance on general revenues, and an effective import tax to fund hazardous waste cleanups. Unfortunately, these alone cannot provide the amount of money called for by the various programs in this bill.

I hope that the Downey-Frenzel amendment will prevail today and that this body will go to conference with a tax title that is unlike the Senate provisions in its choice of a broad-based source of revenue to complement those dollars raised through a reasonable feedstock, waste end, and import taxes to fully fund a strong cleanup program, and that this difference will force continued efforts to more reasonably structure Superfund's tax base. If this amendment succeeds, I hope the conferees will reduce the feedstock tax, which doubles under this amendment, so that domestic petrochemical companies will not be forced out of business or offshore and do further damage to job opportunities domestically and to our imbalance of trade. Some may hate to admit it, but man-made chemicals make possible our way of life. I for one believe a balance is within reach and I hope my colleagues agree.

Mr. DUNCAN. Mr. Chairman, I yield 4 minutes to the gentleman from Louisiana [Mr. MOORE].

(Mr. MOORE asked and was given permission to revise and extend his remarks.)

Mr. MOORE. Mr. Chairman, the question now ends this debate as it began: Who is going to pay the tax? We are now down to one last vote, that of for or against the Downey amendment, and that is the end of the tax section of the bill; that vote determines who pays the tax.

My colleagues, the choice is now one between every possible polluter paying the tax; that is the bill's provision; or only a very few, that is the Downey provision.

The Downey provision would increase fifteen fold the taxes on a certain few companies who are paying those taxes now. Those industries already pay 95 percent of the taxes, and that is in spite of the fact that the Environmental Protection Agency has indicated that only 15 percent of the pollution found at toxic waste sites are caused by these companies.

Fifteen percent. What do you do about the other 85 percent who are escaping paying any tax, while we piously sit here and call for a larger Superfund—which I agree with, but we are unfairly not having everybody responsible pay their part.

The Environmental Protection Agency has identified 9,000 firms—here is the computer printout—9,000 firms in America, from 33 industries, who are not paying anything now who are part of that 85 percent, and Downy will let them go untaxed while he increases fifteen fold the tax on those 15 percent of the hapless souls that are paying it now.

Do not be mislead into thinking that these companies that are paying the taxes now, in the committee will do not pay anything or have their burdened lessened. Under the committee bill, these companies are going to still pay 57 percent of the total Superfund tax. Under the Downey amendment, these same companies will be paying 92 percent of the tax.

So do not get the mistaken impression these companies are getting away with something and not paying their fair share; their burden goes up, and they are still paying well over half in spite of the fact they are responsible for only 15 percent of the toxic waste.

Lastly, I would point out, this particular industry has been healthy. This particular industry is one that has been a net exporter; and we need that in our balance of trade. They have been selling each year overseas more in chemicals than we import; but that, as you can see from this chart, has been steadily going downhill.

The Downey provision will contribute, I believe, to the demise of that industry as a net exporter and perhaps to its very existence in this country. I would point to a statement from the Office of Technology Assessment, OTA:

> An expanded program of the order of $10 billion over five years, based largely on expanded lists of feedstocks and greatly increased rates of taxation of feedstocks, runs a definite risk of having significant negative impacts on this industry. The fears of the industry of such impacts appear to be well-founded.

That is not me; that is our own governmental agency saying it would be a mistake to adopt the Downey amendment.

One thing further. These domestic manufacturers of chemicals who are now exporting chemicals cannot pass on this tax that we are about to put on them if we pass the Downey amendment. They have to eat it.

Now, the Downey amendment does have a provision trying to cover imports, but it only raises $67 million while these companies are paying $10 billion, so it does not come anywhere near taking care of the problem they face.

Meanwhile, the committee bill protects these companies from unfair trade by simply saying that every tax that they pay on anything being exported is rebated; and so this excise tax is rebated, seeing to it our domestic companies are not prejudiced.

Lastly, I want to say that people keep calling this a value-added tax. Do not fall into that trap. This is nothing more than a technique of calling something something its not to try to defeat it. It is not a value added tax; it does not add a tax at every stage of production of a good or an item, which is definition of a value-added tax. It is an excise tax.

Mr. DOWNEY of New York. Mr. Chairman, I yield 1 minute to the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Chairman, as between imperfect choices, it seems to me Downey-Frenzel is the least imperfect. Of course there are inequities; of course people are going to have to pay more than if the alternative were selected, certain people; but it seems to me those who most contribute to the toxic waste will be the ones who will pay the most and to me that is much more fair.

Most importantly, we are opening a trap door with a bottomless hole once we start imposing a value-added tax. Now, my friend from Louisiana said this is not a value-added tax. Well, I think it is.

There is an old Italian saying, "If you dress the shepherd in silk, he will still smell of the goat," and this value-added tax smells of the goat.

I urge support for Downey-Frenzel.

Mr. DUNCAN. Mr. Chairman, I yield 1 minute to the gentleman from Pennsylvania [Mr. RITTER].

(Mr. RITTER asked and was given permission to revise and extend his remarks.)

Mr. RITTER. Mr. Chairman, the question on this vote now and into the future is one of responsibility.

The Members probably have not had the time to investigate some of the individual landfills, some of the individual Superfund sites, but they show hundreds of responsible parties. For example, the Northside Sanitary Landfill in Indiana, out of the top 10 disposers of hazardous wastes, there are three chemical companies. The contributors represent a cross-section of U.S. industry. Stringfellow has a similar array of contributors.

It is not just chemical companies; it is not just oil companies; it is steel companies, it is smokestack industries that generate wastes and would be subject to a substantially increased "waste fund" tax in the Downey-Frenzel amendment.

□ 1630

So it is basic industry that is at stake here also. Hazardous wastes disposed of in Superfund sites come from automobile companies, banks, dealerships, municipalities, universities, and so forth. They come from a broad cross-section of American industry. That is what the Ways and Means measure sought to tax, and I urge its support.

Mr. DOWNEY of New York. Mr. Chairman, how much time do I have remaining?

The CHAIRMAN pro tempore. The gentleman from New York [Mr. DOWNEY] has 4 minutes remaining and the gentleman from Tennessee [Mr. DUNCAN] has 2 minutes remaining.

Mr. DOWNEY of New York. Mr. Chairman, I yield 30 seconds to the gentleman from Minnesota [Mr. FRENZEL].

(Mr. FRENZEL asked and was given permission to revise and extend his remarks.)

Mr. FRENZEL. Mr. Chairman, with the defeat of the Duncan amendment, this is the last chance to stop the imposition of a national sales tax. An affirmative vote for the Downey-Frenzel amendment is all that stands between your constituents and a national sales tax. I do not know if this sales tax smells like a goat or quacks like a duck, but I do know that your constituents are going to call it a sales tax, and I suggest and urge that you vote for Downey-Frenzel instead.

Mr. DUNCAN. Mr. Chairman, I yield one-half minute to the gentleman from Oklahoma [Mr. JONES].

(Mr. JONES of Oklahoma asked and was given permission to revise and extend his remarks.)

Mr. JONES of Oklahoma. Mr. Chairman, most of us in this body have been victimized in campaigns by radical political groups who use a technique of attaching a label to us that is not accurate and then repeating it over and over again. That is precisely what the opponents of the committee financing structure are doing. This is not a VAT, it is not a national sales tax. The Tax Code definition of those two does not apply to this. It was taken precisely from the excise tax portion of the Tax Code. It is identical to the manufacturers excise tax put upon fishing tackle equipment or firearms which most of already voted for last year in the House. That is what this tax is. And that is what it ought to be called. The second point I want to make: This financing mechanism in the committee bill is the only one before us that respects the principle of "The Polluter pays." Last year when we voted on Superfund, we did not have an EPA study; this year we do. It shows that the chemcial and oil industries are responsible for only 22 percent of the problem, the disposal of untreated waste.

The Downey amendment would have them pay 92 percent of the tax to clean it up, and that is not fair.

The third point I want to make from an environment point of view: The committee amendment is the only reliable source of revenues to clean up this toxic waste site. That is why the Public Works Committee, the Ways and Means Committee, the Energy and Commerce Committee, and the National Wildlife Federation endorsed the broad-based tax.

Final point, some other environmental groups seem opposed to it. This is not a key environmental vote. The Duncan amendment was.

Mr. DUNCAN. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. ANDREWS].

(Mr. ANDREWS asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, in my mind there are three excellent reasons to vote against the Downey amendment. First, it is unfair. Second, it is bad for our economy and will add further to our trade imbalance. Third, it relies too greatly on general revenues.

Let's talk about fairness. Under the Downey amendment, the chemical and oil industries will pay 80 to 90 percent of all Superfund taxes despite the fact that they represent less than one-quarter of the potentially responsible parties identified by EPA to date. In Mr. DOWNEY's State of New York, in fact, chemical producers represent only 17 percent of the total number of identified potentially responsible parties.

While it may be easier and more convenient to increase the tax burden on these two industries to the exclusion of the great majority who are actually responsible for disposing of wastes in Superfund sites, to do so would be to fly in the face of equity and fairness.

The Ways and Means Superfund excise tax raises $4.5 billion over 5 years from a wide spectrum of manufacturing industries. This approach recognizes the fact that hazardous wastes is a societal problem. It recognizes the fact that the lifestyles and products we enjoy as American consumers and the products we manufacture as American businesses involve the broad use of chemicals. The Superfund excise tax is the fair approach to financing the $10 billion Superfund which we all agree is desperately needed to deal responsibly with our hazardous waste problem.

Second, the Downey amendment would have disastrous trade consequences. It would raise the price of crude oil by 12 cents per barrel, an increase of 15 times the current price, increasing the cost of fuel and forcing U.S.-based oil companies overseas, costing Americans their jobs.

The Superfund excise tax, on the other hand, is designed to be trade-neutral. The tax would be rebated to companies that manufacture products for export but would be imposed on imports. Unlike the Downey amendment, it addresses the expensive problem of cleaning up our Superfund sites without making two critical industries less competitive in the process.

Third, the Downey amendment relies on general revenues at a level nine times higher than that of the Ways and Means bill. During this historic period of cutting the deficit, we cannot resort to this kind of spending.

Mr. Chairman, the Downey amendment would create gross inequities in a major statute for no other reason than convenience. It fails to recognize the devastating impact it would have on our trade deficit. And it ignores the imperative of budgetary constraint. It deserves for these reasons to be defeated.

Mr. HORTON. Mr. Chairman, I rise in strong support of the amendment offered by my good friend and fellow New Yorker, Mr. DOWNEY. This amendment would strike the value-added tax from title V and it enjoys the support of the AFL–CIO, Grocery Manufacturers Association, and a broad coalition of environmental groups and taxpayer organizations. It is the only revenue proposal which adheres to the principle that "He Who Pollutes Should Pay."

My colleagues preceding me have discussed in detail the problems posed by a VAT and the many reasons for supporting this amendment. They cited hard data in support of our argument that the petroleum and chemical industries must play a significant role in the cleanup process. But there is one argument that I feel compelled to address myself.

A "Dear Colleague" came across my desk this morning which proclaimed: "If you support an oil import fee, then you should vote for the Downey-Frenzel Amendment on Superfund Financing."

The authors argued that this amendment will dramatically increase energy costs for the taxpayers and companies of the Northeast. I appreciate their concern for the energy consumers of my region. But there is no one who has fought harder or longer than I to protect the energy concerns of my region. In 1976, several of my colleagues and I founded the NE–MW Congressional Coalition. Along with my current cochair, Mr. WOLPE, I am committed to protecting the interests of the Northeast and Midwest. I would not advocate a proposal which compromised this commitment in any way.

To illustrate my point, I would like to draw from an analysis prepared by Eric Schaeffer of the NE–MW Institute. This analysis points out that the 18 NE–MW States account for 38 percent of the national consumption of petroleum products. Because of this dependency on oil and gas, we took a long hard look at the impact this amendment would have in our region. We concluded that the petroleum exise tax contained in the Downey-Frenzel amendment would increase the cost of crude oil, gasoline, and heating oil by less than four tenths of 1 percent per gallon. The argument that this will place an undue burden on our region does not bear up to close examination.

I do not want to leave any my colleagues with the thought, however, that I support this amendment because of purely regional concerns. I support this amendment because it offers the soundest means of raising the revenue needed to clean up America's hazardous waste sites. It retains the critical relationship between responsible parties and revenue; and it raises the money needed to ensure the job is done promptly and effectively.

I urge all of my colleagues to support the Downey-Frenzel amendment.

Mr. ECKERT of New York. Mr. Chairman, I rise today to speak in support of the broadbased Superfund financing plan approved by the Ways and Means Committee.

I want to ensure that the revenues to support Superfund are collected in a manner that poses the least economic harm, while dividing the burden for cleanup as equitably as possible. The Superfund excise tax [SET] developed by the Ways and Means Committee and recommended by the Energy and Commerce and Public Works and Transportation Committees accomplishes these goals. The Downey substitute proposal offered on the House floor fails the test.

H.R. 2817, the Superfund Amendments of 1985, provides $10 billion for cleanup over 5 years. The $10 billion is raised through a combination of a tax on crude oil, chemical feedstocks, a waste generation tax, a small amount of general revenues, and a broad-based "Superfund Excise Tax."

I support the approach recommended by the three committees and contained in H.R. 2817 and oppose the Downey substitute for the following reasons:

First, the SET tax is fair and would be paid by a broad category of manufacturers, in recognition of the fact that essentially all types of manufacturers have been identified as being responsible for the hazardous wastes found in Superfund sites. The Environmental Protection Agency's list of priority waste sites contain hazardous materials, in large quantities, from over 30 U.S. industries. A classification of the industries and organizations identified at Superfund sites include: Aerospace, airlines, automobile, banks, beverage, cities, communications, computers, cosmetics, defense, electronics, eye products, financial, grocery, hospitals, hotels, medicine, paint, paper and packaging, railroads, real estate, religious organizations, retail chains, rubber products, steel, textiles, tobacco, universities, and utilities.

In addition, the EPA reports there are over 8,000 potentially responsible parties at Superfund sites yet only 611 companies have paid the feedstock tax since 1981 according to the International Revenue Service.

In conclusion, the evidence clearly shows that the cost of Superfund is presently being paid by fewer than 10 percent of the industries which dispose of hazardous waste and less than 10 percent of the dumpers. We must remedy this unfair situation and broaden the program so that all polluters pay, not just a few. That is why I am supporting the SET tax. The SET tax ensures that Superfund taxes are collected in a manner that poses the least amount of economic harm while dividing the burden for cleanup as equitably as possible. On the other hand, the Downey substitute compounds the current inequity by extracting even greater taxes from less than 10 percent of the polluters.

Second, the SET tax proposal is the only proposal which does not further undermine our balance of payments position and threaten even more jobs dependent on exports and affected by imports. Over the past 10 years, petrochemicals have run a surplus balance of trade. However, from 1980 to 1984, the positive balance of trade of the U.S. petrochemical industry declined from $8.6 billion to $5.5 billion, a decline of 37 percent. The balance of trade in chemicals alone declined from $14 billion to $10 billion during the same period. The Downey substitute would unfairly burden these industries by raising their taxes while allowing foreign chemicals to avoid the taxes for cleanup. The SET tax proposal places the tax on all chemicals, even those coming into the country, while providing a rebate on exported chemicals so they are not saddled with additional burdens in international markets. Clearly, if you want to help with our balance of payments in international trade, you will support the SET proposal and oppose the Downey substitute.

Third, the Ways and Means SET tax is not a value-added tax but rather an excise tax on manufacturers who contribute hazardous waste to dumps but currently pay no tax. By definition, a value-added tax is an incremental excise tax that is levied on the value added at each stage of the processing of a raw material or the production and distribution of a commodity and that typically has the impact of a sales tax on the ultimate consumer. The SET tax does not fit the definition of a value-added tax because it is not passed up through the chain from manufacturing to consumption but is only assessed at the manufacturing level, and then only if you have annual sales of $10 million or more. If you examine the different stages of production and sales and examine whether or not the SET tax proposal would apply or whether or not a value-added tax would apply, you can clearly see the SET tax is not a value-added tax.

WHAT IS TAXED

	SET	VAT
Manufactured products	Yes	Yes
Food and food processing	No	Yes
Agriculture and fishing	No	Yes
Fertilizer	No	Yes
Small business	No	Yes
Unprocessed timber	No	Yes
Retail sales	No	Yes
Wholesale sales	No	Yes
Distribution	No	Yes
Services	No	Yes
All other commerce	No	Yes

It is clear that the SET tax proposal is not a value-added tax.

Finally, the SET tax proposal is far better for consumers of the Northeast than the Downey substitute. The Northeast region of our country is a large oil-consuming region. Therefore, the larger the tax increase on petroleum products the larger the tax which must be paid by heating oil, gasoline, and diesel fuel purchasers in the Northeast. The Downey substitute would raise the crude oil tax 15 times its current level and would add an additional $2.1 billion in petroleum taxes over and above what the SET tax proposal would raise. Since the Northeast depends heavily on heating oil for heating purposes, it follows that the Northeast will pay a larger percentage of the Superfund taxes under the Downey substitute than it would under the Ways and Means SET proposal. In New York, those who use heating oil will pay an additional $6.58 million in fuel oil taxes over and above the SET tax proposal. Over the 5-year life of the bill, residential fuel oil users in New York will pay an additional $32.9 million in Superfund taxes. Clearly, if you want those who heat their homes with fuel oil to pay more in Superfund taxes, you want the Downey substitute; if you think the cost should be divided up in a more equitable fashion, then you want the Ways and Means Committee SET proposal.

Mr. TAUZIN. Mr. Chairman, I must rise in opposition to the amendment offered by our colleague, Mr. DOWNEY of New York. I do so because it is detrimental to domestic industry and encourages the export of American jobs.

This House has paid too little attention to the ramifications proposed tax changes have for the American workforce. The bottom line is simple—raising taxes in the wrong place can put people out of work. This is a matter we, no doubt, will confront again when we consider the Tax Reform Act of 1985.

But I want to draw Members' attention to the specific issue of feedstock tax increases before before us right now. The Downey amendment increases the current Superfund feedstock taxes by $500 million. That's not much, the proponents tell us, in view of the profits of the various chemical companies. Yet, I'm afraid it just might be enough to tranform many basic chemical plants which make imtermediate chemical products into cost centers.

No; I am not here to defend the huge multinational chemical companies; in fact, I'm here because I don't trust them. I know for a fact that these companies will, as they have in the past, move jobs overseas when the cost of producing a product or chemical building block here in the United States exceeds the cost of investing in foreign countries and making the same product over there.

Imports of intermediate chemical products, which bear none of the superfund tax burden of domestic products under the Downey amendment, are one of the fastest moving trends in the market. In part, that is true because competitor nations have subsidized their chemical manufacturing sector with everything from construction loans to the oil and gas essential to making chemical raw materials and intermediate chemical products.

The proponents of the amendment suggest the Superfund taxes we place on feedstocks can be passed along in the price of chemical intermediate products. In fact, there is reason to doubt that. Even the administration, which opposes the tax provisions in the bill before us now, testified at one of the first of many hearings our able colleague, Mr. FLORIO, scheduled that domestic companies, faced with imports of low-priced intermediate chemical, were finding it increasingly difficult to pass along feedstock taxes even at current levels.

As a result, domestic plants which use feedstocks and make intermediate chemical products are rapidly becoming corporate cost centers. Chemical company executives do not ask themselves it they will continue to make these products, they only ask where the job will be done. If it costs less to make chemical intermediates overseas, they'll darn well do it and then import those products for further processing into plastics, fibers, medicines, and a host of other finished goods. And by doing so, they can gain a price advantage through Superfund tax avoidance.

All things being equal in the international market—which they aren't—a domestic company that uses domestic oil, on which the Downey amendment increases taxes, to make benzene, which is then subject to the Downey amendment's increased feedstock taxes, will end up with a higher costed product that can be made overseas. If that overseas competitor also receives natural resources subsidies, passage of the Downey amendment will be just the icing on his cake. And we'll be telling unemployed Americans they can eat cake. But I warn you, that attitude didn't work for King Louis of France, and it won't work for us either.

My able colleague from New York, basking in a rare concurrence with the Reagan administration and the Heritage Foundation, would convince us that we are going after the people who provided the bullets. Never mind that the facts tell us other people aimed the gun and pulled the trigger. I remind my colleagues that a former House Member, who concurred frequently with the Reagan administration and the Heritage Foundation, warned that in this House we shoot real bullets.

The gun is loaded. The Downey amendment aims it directly at domestic workers. In a moment, you will be asked to decide—yes or no—whether we pull the trigger.

I urge a "no" vote.

Mr. NEAL. Mr. Chairman, I would like to urge support of the Downey-Frenzel amendment.

Mr. Chairman, the Downey-Frenzel amendment would remove the value-added tax included in the committee bill, which I consider unfair, regressive, and a foot in the door leading to tax abuse on a grand scale. We are all too familiar with the sorry history of VAT taxes used in Europe and the drag these taxes—some of the highest in the free world—have had on European economic productivity. And I do not think this body would want to use the European experience as an economic role model. This is not a petty concern, Mr. Chairman. We are told by the Office of Technology Assessment that cleaning up toxic waste sites might cost as much as $100 billion. A vastly expanded, but hidden VAT tax would be tempting for future Congresses to use if given the precedent in this legislation.

Additionally, Mr. Chairman, this tax would profoundly alter the basic principle underlying the Superfund, which is that the polluter pays. EPA tells us that 93 percent of toxic wastes are produced by three industries—the oil, chemical, and metal industries. It is only proper that these industries pay their fair share of the costs associated with cleaning up this mess. We should remember that the House overwhelmingly endorsed a Superfund bill last year that would have meant a substantial increase in oil and chemical feedstock taxes over any of the proposals before us today. And that EPA is given other tools in this bill to ensure that all companies identified as contributors to toxic waste dumps reimburse EPA for their share of the cleanup costs.

If imposed, Mr. Chairman, the VAT tax would have a harmful impact on a wide variety of industries, ranging from furniture to groceries, that have little relationship to the hazardous waste problem.

Another little known problem associated with the VAT tax is the cost to the Treasury. I understand that it would cost over $5 million a year just to administer a VAT tax, compared with the current cost of collecting Superfund taxes of $2,000 per year. Certainly, the new program would be more expensive for Treasury to administer, but nowhere near the cost of a VAT tax. A broader VAT tax, according to Treasury, might cost close to $1 billion a year to collect.

Mr. Chairman, Downey-Frenzel is the logical alternative to the committee bill and I urge my colleagues to support it.

Mr. MARKEY. Mr. Chairman, I rise in strong support of the amendment offered by the gentleman from New York [Mr. DOWNEY]. An important part of crafting a strong, tough Superfund Program is providing for an adequate, sound financing mechanism. The Downey admendment provides sufficient funding—$10 billion—for a strong Superfund Program, and maintains a fair tax system at the same time.

The Ways and Means provision, while supplying nearly the same amounts as the Downey amendment, would raise about 40 percent of its total from a value-added tax. Whether this provision is cloaked in the language of "broad-based tax," "manufacturer's excise tax," or some other obfuscatory phrase, it is nonetheless a value-added tax. I have long opposed such a tax as a regressive economic measure, falling most heavily on the poor and the elderly. Using this mechanism to finance Superfund would set a very poor precedent.

The Downey amendment would replace the value-added tax by increasing other components of financing: The chemical feedstock tax, a petroleum tax, and a management tax on those who generate hazardous waste. The Downey amendment would also maintain the concept that "the polluter pays." According to the EPA, 93 percent of all hazardous waste generated in the United States is produced by the chemical, petroleum, and metal-related industries, which are the companies which pay the chemical feedstock taxes.

The Duncan amendment must be rejected because it fails to supply sufficient funds, and too much of the funding it supplies would come from general revenues. This amendment would use $2.3 billion from general revenues, more than either the Ways and Means provision or the Downey amendment. This would increase the amount of public funds devoted to correct private malfeasance. In addition, the Duncan amendment would provide an assured fund of only $7.7 billion: the remainder would come from a surcharge tax, to be implemented at the discretion of the administration. But allowing EPA discretion has been one of the major shortcomings in the present Superfund. An administration, such as the present one, which was indifferent or inimical to a strong Superfund Program, could cripple Superfund by fail-

ing to implement a surcharge, keeping overall funding low.

Finally, the need for a legislated Superfund financing mechanism could be eliminated if toxic chemical polluters were more willing to accept economic responsibility for their actions. Superfund could be a revolving account, requiring no further Federal contribution, if companies would promptly reimburse the fund as EPA uses it to finance hazardous waste cleanup. But EPA recover from responsible polluters has been low, and the Ways and Means version assumes this low recovery rate—$0.3 billion out of $10 billion needed—will continue. The oil and chemical companies complain that they bear too much of the burden to finance Superfund. If these companies would encourage their corporate brethren to accept full responsibility for cleanup, the need to raise Superfund money by taxing could be eliminated.

Until such a scenario develops, however, the need remains to provide a sound Superfund financing mechanism. The Downey amendment raises the money necessary to support a tough, comprehensive program, and retains tax fairness in the process. I urge my colleagues to adopt the Downey amendment.

Mr. DUNCAN. Mr. Chairman, I yield myself the balance of my time.

The CHAIRMAN pro tempore. The gentleman from Tennessee [Mr. Duncan] has 30 seconds remaining, and the Chair understands the gentleman is yielding that remaining time to himself.

Mr. DUNCAN. Mr. Chairman, I urge my colleagues to vote against the Downey amendment. The Downey amendment is not the only avenue to vote against the value-added tax, which I am as strong or stronger than perhaps he is against the value-added tax. We can vote against the committee bill because apparently even our chairman is not for the committee bill, and we ought to come back with a proper financing mechanism.

Mr. DOWNEY of New York. Mr. Chairman, I yield the balance of my time to the chairman of the Committee on Ways and Means, the gentleman from Illinois [Mr. Rostenkowski].

The CHAIRMAN pro tempore. The gentleman from Illinois [Mr. Rostenkowski] is recognized for 3½ minutes.

Mr. ROSTENKOWSKI. Mr. Chairman, I strongly support the Downey amendment.

While the tax title reported by the **Committee on Ways and Means raises adequate revenue to clean up hazardous waste sites, the method by which it raises a large part of that revenue is seriously flawed.**

The bill now imposes broad-based taxes to fund hazardous waste cleanup. If the Congress wants to use general revenue to finance Superfund, we should use our existing tax base and not invent a new, complex, and flawed tax that is only vaguely related to the problem.

H.R. 2817 contains what is called a Superfund excise tax. Call it what you will, it is a value-added tax. It is a broad-based tax on consumption.

This proposed Superfund excise tax is very similar to the type of VAT used in Canada because it is imposed on sales by manufacturers. In Canada it is referred to as a manufacturers' VAT.

To date in our 200-year history, the Federal Government has avoided any form of broad-based consumption tax. And for good reasons. Americans have believed that the income tax is the proper way to finance most costs of government. We believe that taxation should be based on ability to pay and not consumer spending. We have left the field of general sales taxes to State and local governments.

Before we break new and historic ground, there ought to be a broad-based public debate on the merits of broad-based consumption taxes. We should not let the camel's nose under the tent just bacause the proposed tax rate is low and the spending objective is noble.

The history of VAT, and similar taxes in other countries, is that the rate starts low and the base broad. But any VAT-like tax is a money machine. Small rate increases yield big revenues. No wonder some have looked at the structure of the Superfund excise tax and have proposed massive expansion in the deceptive name of a business transfer tax to fund income tax cuts, or to protect corporations from tax reform, or to address the budget deficit.

Any VAT is regressive. With any tax like this, pressure builds to erode the base in an effort to improve equity. Even this bill has had its base eroded by exemptions for food, fertilizer, unprocessed agricultural, and fishery products. Other necessities, like medicines, clothing, and housing are fully taxed.

This is not the time, and this bill is not the place to start America on the path to a national sales tax on consumers.

Mr. Chairman, I believe the Downey amendment is the best possible resolution of the difficult problem of financing Superfund. The Committee on Ways and Means defeated broad-based tax proposals seven times before this version of the VAT was adopted by a vote of 18 to 17. Two of the previously defeated amendments had included an excise tax identical to the one which eventually passed. Also, the administration has made it clear that the committee's VAT would be vetoed by the President.

I urge members to support the Downey amendment.

The CHAIRMAN pro tempore. All time has expired.

The question is on the amendment offered by the gentleman from New York [Mr. DOWNEY].

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. DUNCAN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 220, noes 206, not voting 8, as follows:

[Roll No. 444]

AYES—220

Ackerman
Addabbo
Akaka
Annunzio
Aspin
Atkins
AuCoin
Barnard
Barnes
Bates
Bedell
Beilenson
Bennett
Berman
Biaggi
Bilirakis
Boehlert
Bonior (MI)
Bonker
Boucher
Boxer
Broomfield
Brown (CA)
Burton (CA)
Byron
Carr
Chandler
Clay
Coats
Coleman (MO)
Collins
Conte
Conyers
Cooper
Coyne
Crockett
Daniel
Darden
Daschle
Davis
Dellums
DeWine
Dicks
Dixon
Donnelly
Dorgan (ND)
Downey
Durbin
Dwyer
Dymally
Dyson
Early
Edgar
Edwards (CA)
Evans (IA)
Evans (IL)
Fascell
Fawell
Fish
Florio
Foley
Ford (MI)
Frank
Frenzel
Garcia
Gejdenson
Gekas
Goodling
Gordon
Green
Gregg
Guarini
Gunderson
Hall (OH)
Hamilton
Hawkins
Hayes
Henry
Hertel
Hiler
Holt
Hopkins
Horton
Howard
Hoyer
Hughes
Hyde
Ireland
Jeffords
Johnson
Jones (TN)
Kanjorski
Kaptur
Kastenmeier
Kennelly
Kildee
Kindness
Kleczka
LaFalce
Lantos
Latta
Leach (IA)
Lehman (CA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lightfoot
Lipinski
Lloyd
Lowry (WA)
Luken
Lundine
Lungren
Mack
MacKay
Madigan
Markey
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
McCain
McCloskey
McDade
McEwen
McGrath
McHugh
McKernan
Meyers
Mica
Michel
Mikulski
Miller (WA)
Mineta
Mitchell
Moakley
Molinari
Moody
Morrison (CT)
Morrison (WA)
Mrazek
Neal
Nowak
Oberstar
Obey
Owens
Panetta
Parris
Pashayan
Pease
Penny
Pepper
Petri
Porter
Pursell
Rangel
Regula
Reid
Robinson
Rodino
Rostenkowski
Roth
Rowland (CT)
Roybal
Rudd
Sabo
Savage
Scheuer
Schneider
Schroeder
Schumer
Seiberling
Sensenbrenner
Sharp
Shaw
Shuster
Sikorski
Skelton
Smith (FL)
Smith (IA)
Smith (NJ)
Smith, Denny (OR)
Smith, Robert (NH)
Snowe
Solarz
Solomon
St Germain
Stallings
Stark
Stokes
Stratton
Studds
Swift
Tauke
Taylor
Torres
Torricelli
Towns
Traficant
Traxler
Valentine
Vento
Vucanovich
Walker
Waxman
Weaver
Weiss
Wheat
Whitley
Whitten
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (FL)
Zschau

NOES—206

Alexander
Anderson
Andrews
Anthony
Applegate
Archer
Armey
Badham
Bartlett
Barton
Bateman
Bentley
Bereuter
Bevill
Bliley
Boggs
Boland
Borski
Bosco
Boulter
Breaux
Brown (CO)
Broyhill
Bruce
Bryant
Burton (IN)
Bustamante
Callahan
Campbell
Carney
Carper
Chapman
Chappell
Cheney
Clinger
Cobey
Coble
Coelho
Coleman (TX)
Fowler
Franklin
Frost
Fuqua
Gallo
Gaydos
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Gradison
Gray (IL)
Gray (PA)
Grotberg
Hall, Ralph
Hammerschmidt
Hansen
Hartnett
Hatcher
Hefner
Heftel
Hendon
Hillis
Hubbard
Huckaby
Hunter
Hutto
Jacobs
Jenkins
Jones (NC)
Jones (OK)
Kasich
Kemp
Kolbe
Kolter
Kostmayer
Kramer
Nielson
O'Brien
Oakar
Olin
Ortiz
Oxley
Packard
Perkins
Pickle
Quillen
Rahall
Ray
Richardson
Ridge
Rinaldo
Ritter
Roberts
Roe
Roemer
Rogers
Rose
Roukema
Rowland (GA)
Russo
Saxton
Schaefer
Schuette
Schulze
Shelby
Shumway
Siljander
Sisisky
Skeen
Slattery
Slaughter
Smith (NE)
Smith, Robert (OR)
Snyder

Combest
Coughlin
Courter
Craig
Crane
Dannemeyer
Daub
de la Garza
DeLay
Derrick
Dickinson
Dingell
DioGuardi
Dornan (CA)
Dowdy
Dreier
Duncan
Eckart (OH)
Eckert (NY)
Edwards (OK)
Emerson
English
Erdreich
Fazio
Feighan
Fiedler
Fields
Flippo
Foglietta
Ford (TN)
Lagomarsino
Leath (TX)
Leland
Lent
Lewis (CA)
Lewis (FL)
Livingston
Loeffler
Long
Lott
Lowery (CA)
Lujan
Manton
Marlenee
Mazzoli
McCandless
McCollum
McCurdy
McMillan
Miller (CA)
Mollohan
Monson
Montgomery
Moore
Moorhead
Murphy
Murtha
Myers
Natcher
Nichols
Spence
Spratt
Staggers
Stangeland
Stenholm
Strang
Stump
Sundquist
Sweeney
Swindall
Synar
Tallon
Tauzin
Thomas (CA)
Thomas (GA)
Udall
Vander Jagt
Visclosky
Volkmer
Walgren
Watkins
Whitehurst
Whittaker
Williams
Wilson
Wirth
Wise
Wright
Young (AK)
Young (MO)

NOT VOTING—8

Boner (TN)
Brooks
Chappie
McKinney
Miller (OH)
Nelson
Price
Weber

☐ 1645

The Clerk announced the following pairs:

On this vote:

Mr. Nelson of Florida for, with Mr. Brooks against.

Mr. Weber for, with Mr. Chappie against.

Messrs. MILLER of California, RUSSO, ROSE, and COBLE changed their votes from "aye" to "no."

Mr. PASHAYAN changed his vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. STUDDS

Mr. STUDDS. Mr. Chairman, I ask unanimous consent to offer an amendment to substitute a new title IV in the bill.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

Mr. LENT. Mr. Chairman, reserving the right to object, I will not object, but I want to hear the gentleman's explanation of this amendment.

☐ 1700

Mr. STUDDS. Mr. Chairman, if the gentleman will yield, I offer this amendment, which is imposing in size, but noncontroversial in substance, as a substitute to title IV of the substitute bill.

The amendment has a single purpose, which is to conform the text to the section of the title of the bill developed by the Committee on Ways and Means that pertains to oil pollution liability and compensation.

This is necessary for the simple reason that the Committee on Merchant Marine and Fisheries acted on this measure before the Ways and Means Committee title was reported. The Ways and Means title includes language that makes some of the language in the present title IV unnecessary and confusing. The Merchant Marine Committee never likes to do anything that is unnecessary or confusing, so we are proposing to strike those parts of the current title that are essentially restated, albeit in somewhat different form, by the Committee on Ways and Means.

I can assure members that the proposed substitute does not contain any language that is not already in the bill before us. It merely eliminates language and redesignates terms to conform to the Ways and Means title.

I regret that we were not able to develop this language in time to include it in the substitute bill introduced last week by Mr. WRIGHT. Unfortunately, we had to wait until we knew what the rule for consideration of this bill would be, as well as what the position of the Ways and Means Committee would be on certain issues related to oil spill liability, before we were assured of the desirability of offering this language.

I would like to thank Chairman ROSTENKOWSKI and his staff for their cooperation in developing an agreement on oilspill liability that was included in the amendments offered to title V. We appreciate this cooperation, and we look forward to the continued support of the committee for a strong oil spill bill in conference, or in any other arena where the issue may in the future arise.

(Mr. LENT asked and was given permission to revise and extend his remarks.)

Mr. LENT. Mr. Chairman, I rise in strong support of the amendment by the gentleman from Massachusetts.

This body has long sought to enact a comprehensive system of liability and compensation for oil spill damage and cleanup costs. There is virtually no dispute over the fact that we need a comprehensive system to replace the hodgepodge of separate Federal oil spill statutes that presently exist. This oil spill provision is fully consistent with the overall environmental and liability objectives of Superfund, and is essentially the same in substance as this body adopted in the 98th Congress.

This language represents a delicate but fair balance among all affected interests. I urge all of these interests to assist us to make sure that this comprehensive system of liability and compensation for oilspill damage—a goal we have been seeking for nearly a decade—is promptly enacted into law.

Mr. Chairman, the substitute Superfund reauthorization that we have been considering already contains an oil spill provision—the gentleman's amendment now is a conforming amendment to cleanup the Superfund substitute in light of decisions we have made here on the floor in the course of adopting this legislation.

I thank the gentleman from Massachusetts [Mr. STUDDS] for offering this compromise and Chairman ROSTENKOWSKI and the Ranking Member, Mr. DUNCAN, for their efforts in helping bring about this provision.

I urge all my colleagues to support this amendment.

Mr. SNYDER. Mr. Chairman, will the gentleman yield.

Mr. LENT. I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, we are in agreement in the Public Works and Transportation Committee.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. LENT. I yield to the gentleman from New Jersey.

Mr. ROE. Mr. Chairman, we also had a chance to review this amendment. It is a conforming amendment, and it helps to cleanup that section of the bill. We have no objection to it.

Mr. YOUNG of Alaska. Mr. Chairman, I rise in support of this provision concerning title IV, the Comprehensive Oil Pollution Liability and Compensation Act. This title establishes a comprehensive system of liability and compensation for damages caused by oil pollution and makes conforming amendments with regard to title V. It is legislation that I and many of my colleagues have worked on for nearly a decade. The need for a uniform law to provide a comprehensive system as proposed is well recognized. Although I would have preferred a corporation structure to administer the fund, I recommend that we all support this title as a good compromise that accommodates all committees.

In particular, this approach accommodates the repeal and rebate of the Trans-Alaska Pipeline Liability Fund. It is my understanding that the report language reported by the Merchant Marine and Fisheries Committee in House Report 99-253, part 4, will be considered as part of the legislative history for this proposal except where the title has been amended in the bill we are considering today. In particular, I would note that the language regarding the Trans-Alaska Pipeline Liability Fund be referred to as part of the legislative history on that fund. I note that the report states a concern regarding the liability of officers and trustees of the TAPLF Fund that may continue after that fund is ended. It was noted that the fund could take all steps necessary and proper to defray any of the lawful costs associated with officer and trustee liability, including purchasing insurance and securing releases from satisfied claimants or contributors receiving rebates. Further, the TAPLF provision provides for the assumption of liability under this act for all TAPLF claims beginning on the effective date of this provision.

Further, I want to voice my support for the provision which provides for a limitation or restriction on the payment of costs or expenses of administration of the oil spill title. This restriction is the same one that applies to section 111 of the CERCLA law and is intended to apply in the same manner as it applies to the EPA regarding the costs of the chemical spill and cleanup program. What this means is that these funds may only be used to the extent that the costs or expenses are necessary for, and incidental to, the implementation of this title. Thus, this prevents the bureaucratic temptation to expand a program merely because funds are available in the oil spill fund. The oil spill fund is set up to compensate innocent victims and to perform all necessary cleanup work that needs to be done in the case of a spill. It should not be used to pay for personnel or other expenses that would be handled in the normal appropriations process for the agency that is given responsibility to carry out the functions of this title. This provision is a needed cost control measure.

I thank the gentleman from Massachusetts for offering this important amendment and his work in forging this compromise. Thus, in summary, I support this oil spill amendment and again urge my colleagues to support this important provision.

Mr. LENT. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection

The CHAIRMAN. The clerk will report the amendment.

The clerk read as follows:

Amendment offered by Mr. STUDDS: Strike out title IV of the bill and insert in lieu thereof the following:

TITLE IV—COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION

SEC. 400. SHORT TITLE.

This title may be cited as the "Comprehensive Oil Pollution Liability and Compensation Act".

SUBTITLE A—OIL POLLUTION LIABILITY AND COMPENSATION

SEC. 401. DEFINITIONS.

For purposes of this subtitle, the term—

(1) "claim" means a demand in writing for a sum certain;

(2) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from that incident;

(3) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(4) "facility" means a structure, or group of structures, which is either—

(A) located, in whole or in part, on the outer Continental Shelf and used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the outer Continental Shelf, or

(B) licensed under the Deepwater Port Act of 1974;

(5) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

(6) "guarantor" means the person, other than the responsible party, who provides evidence of financial responsibility for a responsible party;

(7) "incident" means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, which causes, or poses a substantial threat, of oil pollution;

(8) "inland oil barge" means a non-self-propelled vessel, carrying oil in bulk as cargo or in residue from cargo and certificated to operate only on the internal waters of the United States while operating in such waters;

(9) "internal waters of the United States" means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside that baseline which are a part of the Gulf Intracoastal Waterway;

(10) "lessee" means a person holding a leasehold interest in an oil and gas lease on submerged lands of the outer Continental Shelf granted or maintained under the Outer Continental Shelf Lands Act;

(11) "licensee" means a person holding a license issued under the Deepwater Port Act of 1974;

(12) "mobile offshore drilling unit" means every watercraft or other contrivance (other than a public vessel of the United States) capable of use as a means of transportation on water and as a means of drilling for oil on the outer Continental Shelf;

(13) "natural resources" means living and nonliving resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(14) "Navigable waters" means the waters of the United States, including the territorial sea;

(15) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(16) "oil pollution" means—

(A) the presence of oil in or on the navigable waters or on land within the United States immediately adjacent thereto, or in or on the waters of the contiguous zone—

(i) which has been discharged from a vessel or facility; and

(ii) which has been discharged in quantities which the President has determined may be harmful pursuant to paragraph (4) of subsection (b) of section 311 of the Federal Water Pollution Control Act;

(B) the presence of oil (other than natural seepage) in or on waters outside the territorial limits of the United States and of any foreign country—

(i) which has been discharged in connection with activities conducted under the Outer Continental Shelf Lands Act;

(ii) which has been discharged from a deepwater port licensed under the Deepwater Port Act of 1974 or from a vessel transiting to or from a deepwater port and located in a safety zone of a deepwater port licensed under such Act;

(iii) causing injury to or loss of natural resources; or

(iv) which has been discharged, before being brought ashore in a port in the United States, from a ship that received such oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) for transportation to a port in the United States; and

(C) the presence of oil (other than natural seepage) in or on the waters, including the territorial sea, or adjacent shoreline, of a foreign country—

(i) which has been discharged from a vessel located within the navigable waters;

(ii) which has been discharged in connection with activities conducted under the

Outer Continental Shelf Lands Act;

(iii) which has been discharged from a deepwater port licensed under the Deepwater Port Act of 1974 or a vessel transiting to or from a deepwater port and located in a safety zone of a deepwater port under such Act; or

(iv) which, in the case of the waters or adjacent shoreline of Canada, has been discharged, before being brought ashore in a port in the United States, from a ship that received such oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) for transportation to a port in the United States;

(17) "operator" means—

(A) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel; or

(B) in the case of a pipeline, any person, except the owner, who is responsible for the operation of such pipeline by agreement with the owner;

(18) "outer Continental Shelf" has the meaning set forth in subsection (a) of section 2 of the Outer Continental Shelf Lands Act;

(19) "owner" means, in the case of a vessel or a pipeline, any person holding title to, or in the absence of title, any other indicia of ownership of, the vessel or pipeline, whether by lease, permit, contract, license, or other form of agreement, except that such term does not include a person who, without participating in the management or operation of a vessel or a pipeline, holds indicia of ownership primarily to protect his security interest in the vessel or pipeline;

(20) "permittee" means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act;

(21) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or any other commercial, legal, or governmental entity;

(22) "public vessel" means a vessel which—

(A) is owned or chartered by demise, and operated by (i) the United States, (ii) a State or political subdivision thereof, or (iii) a foreign government, and

(B) is not engaged in commercial service;

(23) "removal costs" means—

(A) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, section 5 of the Intervention on the High Seas Act, or subsection (b) of section 18 of the Deepwater Port Act of 1974, and

(B) cleanup costs, other than the costs described in subparagraph (A);

(24) "responsible party" means—

(A) with respect to a vessel or a pipeline, the owner or operator of such vessel or pipeline;

(B) with respect to a facility (other than a deepwater port or pipeline), the lessee or permittee of the area in which such facility is located, or the holder of a right of use and easement granted under the Outer Continental Shelf Lands Act for the area in which such facility is located where such holder is a different person than the lessee or permittee; and

(C) with respect to a deepwater port, the licensee;

(25) "Secretary" means the Secretary of Transportation;

(26) "ship" means a vessel (other than an inland oil barge) carrying oil in bulk as cargo or in residue from cargo;

(27) "Trust Fund" means the Oil Spill Liability Trust Fund established by section 9507 of the Internal Revenue Code of 1954;

(28) "United States" and "State" mean the several States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States;

(29) "United States claimant" means any person residing in the United States, the Government of the United States or any agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim; and

(30) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

SEC. 402. COORDINATION WITH INTERNATIONAL CONVENTIONS.

During any period in which both the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984, are in force with respect to the United States, this subtitle shall not apply with respect to damage arising out of or directly resulting from oil pollution or a substantial threat of oil pollution to the extent that compensation is available under such conventions and subtitle D.

SEC. 403. DAMAGES AND CLAIMANTS.

(a) DAMAGES FOR WHICH CLAIMS MAY BE ASSERTED.—Claims may be asserted, to the extent provided in this section, for damages for economic loss incurred on or after the effective date of this section and arising out of or directly resulting from oil pollution or the substantial threat of oil pollution for—

(1) removal costs;

(2) injury to, or destruction of, real or personal property;

(3) reasonable costs incurred in (A) assessing both short-term and long-term injury to, or destruction of, natural resources, (B) preparing a restoration and acquisition plan with respect to the damaged resources, and (C) restoring or acquiring the equivalent of the damaged resources;

(4) loss of subsistence use of natural resources;

(5) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages are

sustained during the two-year period beginning on the date the claimant first suffers such loss; and

(6) loss of tax revenue for a period of one year due to injury to real or personal property.

(b) Removal Costs Recoverable by All Claimants.—

. (1) General rule.—A claim may be asserted under paragraph (1) of subsection (a) by any person.

(2) Limitation on recovery by responsible party.—(A) The responsible party with respect to a vessel or facility involved in an incident may assert a claim under paragraph (1) of subsection (a) only if he can show that—

(i) he is entitled to a defense to liability under section 404(c), or

(ii) he is entitled to a limitation of liability under section 404(b).

(B) A claimant who is not entitled to a defense to liability, but who is entitled to a limitation of liability, may assert a claim under paragraph (1) of subsection (a) only to the extent that the sum of the removal costs incurred by the responsible party plus the amounts paid by the responsible party or by the guarantor on behalf of the responsible party for claims asserted under subsection (a) exceeds the amount to which the total of the liability under section 404(a) and removal costs incurred by, or on behalf of, the responsible party is limited under section 404(b).

(c) Other Damages Recoverable by United States Claimants.—

(1) Injury to property; subsistence use of natural resources.—A claim may be asserted under paragraphs (2) and (4) of subsection (a) with respect to oil pollution described in subparagraph (A) or (B) of section 401(16) by any United States claimant, but only if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant.

(2) Injury to natural resources.—A claim may be asserted under paragraph (3) of subsection (a) by the President as trustee for natural resources controlled by the United States or by the Governor of any State for natural resources within the boundary of the State and controlled by the State or a local government within the State.

(3) Loss of profits.—A claim may be asserted under paragraph (5) of subsection (a) with respect to oil pollution described in subparagraph (A) or (B) of section 401(16) by any United States claimant, but only if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource or, if such activities are seasonal in nature, 25 percent of the claimant's earnings during the season in which such activities took place.

(4) Loss of tax revenue.—A claim may be asserted under paragraph (6) of subsection (a) only by a State or political subdivision thereof.

(d) Other Damages Recoverable by Foreign Claimants.—

(1) General rule.—A claim may be asserted under paragraph (2), (3), (4), or (5) of subsection (a) with respect to oil pollution described in subparagraph (C) of section 401(16) by a foreign claimant who is a resident of the country in which the oil pollution occurs, to the same extent that a United States claimant would be able to assert a claim with respect to oil pollution described in subparagraph (A) of section 401(16), if—

(A) the foreign claimant is not otherwise compensated for his loss; and

(B) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country of which the claimant is a resident, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

(2) Special rule for Canadian claimant respecting trans-Alaska pipeline oil.—In the case of any oil pollution described in section 401(16)(B)(iv) or 401(16)(C)(iv), a claim may be asserted under paragraph (2), (3), (4), or (5) of subsection (a) by a resident of Canada without regard to subparagraph (B) of paragraph (1), to the same extent that a United States claimant would be able to assert a claim with respect to oil pollution described in subparagraphs (A) and (B) of section 401(16).

(e) Attorney General.—A claim may be asserted under subsection (a) by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of Unites States claimants who may assert a claim under this section.

(f) Group of Claimants.—If the Attorney General fails to act under subsection (e) within sixty days after the date on which the Secretary designates a source under section 406, any member of a group may assert a claim for damages on behalf of the group. Failure of the Attorney General to act shall have no bearing on any claim for damages asserted under this section.

SEC. 404. LIABILITY.

(a) Joint, Several, and Strict Liability.—

(1) General rule.—Subject to paragraph (2) of this subsection and subsections (b) and (c), the responsible party with respect to a facility or a vessel (other than a public vessel) that is the source of oil pollution, or poses a substantial threat of oil pollution in circumstances that justify the incurrence of the type of costs described in section 401(23)(A), shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under section 403.

(2) Special rule for MODU's.—(A) Except as provided in subparagraph (B), in any case in which a mobile offshore drilling unit is being used as a facility and is the source of oil pollution originating on or above the surface of the water or poses a substantial threat of such oil pollution, such unit shall be deemed to be a vessel which is a ship for purposes of this subtitle.

(B) To the extent that damages for which claims may be asserted under section 403 from any incident described in subparagraph (A) exceed the amount for which the responsible party is liable under subparagraph (A) (as such amount may be limited under subsection (b)(1)(B)), the mobile offshore drilling unit shall be deemed to be a facility covered by subsection (b)(1)(D), except that for purposes of applying subsection (b)(1)(D) the amount specified in such subsection shall be reduced by the amount for which the responsible party with respect to a ship is liable under subparagraph (A).

(C) In the case of any incident described in subparagraph (A)—

(i) which is caused primarily by willful misconduct or gross negligence within the privity or knowledge of both the owner or operator of the mobile offshore drilling unit and the lessee or permittee of the area, or holder of a right of use or easement for the area, in which such unit is located; or

(ii) with respect to which both such owner or operator and such lessee or permittee or holder fail or refuse to report the incident where required by law or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup and removal activites;

such owner or operator and such lessee or permittee or holder shall be jointly, severally, and strictly liable (without limitation under subsection (b)) for all loss for which a claim may be asserted under section 403.

(b) LIMITS ON LIABILITY.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the total of the liability under subsection (a) and any removal costs incurred by, or on behalf of, the responsible party with respect to an incident shall be limited to—

(A) in the case of a vessel other than a ship or an inland oil barge, $500,000 or $300 per gross ton whichever is greater;

(B) in the case of a ship, $3,000,000 or $420 per gross ton, whichever is greater (but not to exceed $60,000,000);

(C) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater; or

(D) in the case of a facility, $50,000,000.

(2) EXCEPTIONS.—Paragraph (1) shall not apply—

(A) when the incident is caused primarily by willful misconduct or gross negligence within the privity or knowledge of a responsible party; or

(B) when a responsible party fails or refuses to report the incident where required by law or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup and removal activities.

(3) REPORT.—The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations on liability specified in this subsection.

(c) DEFENSES TO LIABILITY.—

(1) COMPLETE DEFENSES.—Except when the responsible party has failed or refused to report an incident where required by law, there shall be no libability under subsection (a) if the responsible party proves that the incident—

(A) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable, and irresistible character, or

(B) was wholly caused by an act or omission of a person other than—

(i) a responsible party;

(ii) an employee or agent of a responsible party; or

(iii) one whose act or omission occurs in connection with a contractual relationship with a responsible party.

(2) PARTICAL DEFENSES.—There shall be no liability under subsection (a)—

(A) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(B) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(d) LIABILITY OF TRUST FUND.—

(1) GENERAL RULE.—The Trust Fund shall be liable for damages for which claims may be asserted under section 403 and for which claims are presented under this subtitle, to the extent that the damages are not otherwwise compensated.

(2) DEFENSES TO LIABILITY.—Except for the removal costs specified in section 401(23)(A), there shall be no liability under paragraph (1)—

(A) where the incident is caused wholly by an act of war, hostilities, civil war, or insurrection;

(B) as to a particular claimant, where the incident or the economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(C) as to a particular claimant, to the extent that the incident or the economic loss is caused by the negligence of that claimant.

(e) LIABILITY FOR INTEREST.—

(1) GENERAL RULE.—The responsible party or his guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of a claim under section 403 for the period described in paragraph (2).

(2) PERIOD FOR WHICH INTEREST IS OWED.—(A) Except as provided in subparagraph (B), the period for which interest shall be paid under paragraph (1) is the period beginning on the date on which the claim is presented to the responsible party or guarantor and ending on the date on which the claimant is paid, inclusive.

(B) If the responsible party or guarantor offers to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim, the period described in subparagraph (A) shall not include the period beginning on the date such offer is made and ending on the date such offer is accepted. If such offer is made within sixty days after the date upon which the claim is presented, or of the date upon which advertising is begun pursuant to section 406, whichever is later, the period described in subparagraph (A) shall not include any period before such offer is accepted.

(3) Rate of interest.—The interest paid under this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve bulletin.

(4) Relationship to liability limits.—Interest under this subsection shall be in addition to damages for which claims may be asserted under section 403 and shall be paid without regard to any limitation of liability under subsection (b). The payment of interest under this subsection by a guarantor shall be subject to section 405(e).

(f) Agreements.—

(1) Liability not transferable.—A responsible party may not transfer the liability imposed under this section to any other person.

(2) Indemnification agreements.—Nothing in this title shall preclude an agreement whereby a person who, by an agreement with a responsible party, agrees to indemnify the responsible party for the liability imposed under subsection (a).

(g) Relationship to Other Causes of Action.—Nothing in this subtitle shall bar a cause of action that a responsible party subject to liability under this section or a guarantor has or would have by reason of subrogation or otherwise against any person.

(h) Relationship to Other Law.—To the extent that it is in conflict with, or otherwise inconsistent with, any other law (other than title V or any amendment made by title V) relating to liability or the limitation thereof, this section supersedes such other law.

(i) Administrative Costs.—The Trust Fund shall not be available for the payment of costs and expenses of administration of this title, unless such costs and expenses are necessary for and incidental to the implementation of this title.

SEC. 405. FINANCIAL RESPONSIBILITY.

(a) Vessels.—

(1) Requirement.—The responsible party with respect to each vessel (except a public vessel or a non-self-propelied vessel that does not carry oil as cargo or fuel) over three hundred gross tons that uses a facility or the navigable waters shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum liability under section 404 of this subtitle to which the responsible party would be exposed in a case where he would be entitled to limit his liability in accordance with subsection (b) of section 404. In cases where a responsible party owns or operates more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) Withholding clearance.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have the certification required under this subsection or the regulations issued hereunder.

(3) Denying entry to or detaining vessels.—The Secretary of the department in which the Coast Guard is operating may (A) deny entry to any facility, to any port or place in the United States, or to the navigable waters, or (B) detain at the facility or at the port or place in the United States, any vessel subject to this subsection that, upon request, does not produce the certification required under this subsection or regulations issued hereunder.

(b) Facilities.—The responsible party with respect to each facility shall establish and maintain, in accordance with regulations issued by the secretary, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the responsible party would be exposed in a case where he would be entitled to limit his liability in accordance with subsection (b) of section 404. In cases where the responsible party is responsible for more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to one such facility.

(c) Methods.—Financial responsibility under this section may be established by any one, or by any combination, of the following methods acceptable to the Secretary: evidence of insurance, surety bond, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(d) Claims Against Guarantor.—Any claim authorized by section 403(a) may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section for any responsible party with respect to a facility or vessel. In defending against such a claim, the guarantor may invoke all rights and defenses which would be available to the responsible party under this subtitle. He may also invoke the defense that the incident was caused by the willful misconduct of the responsible party, but he may not invoke any other defense that he might be entitled to invoke in proceedings brought by the responsible party against him.

(e) Limitation on Guarantor's Liability.—Nothing in this subtitle shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceeds, in the aggregate, the amount of financial responsibility which that guarantor has provided for the responsible party for any vessel or facility that was a source of oil pollution in that incident. Nothing in this subsection shall be construed to limit any other statutory, contractual, or common law liability of a guarantor to any responsible party for whom such guarantor provides evidence of financial responsibility including, but not limited to, the liability of such guarantor for negotiating in bad faith a settlement of any claim.

SEC. 406. DESIGNATION AND ADVERTISEMENT.

(a) DESIGNATION OF SOURCE AND NOTIFICATION.—When the Secretary receives information of an incident that involves oil pollution, he shall, where possible and appropriate, designate the source or sources of the oil pollution. If a designated source is a vessel or a facility, the Secretary shall immediately notify the responsible party and the guarantor, if known, of that designation.

(b) ADVERTISEMENT BY THE RESPONSIBLE PARTY OR GUARANTOR.—If a responsible party or guarantor fails to inform the Secretary, within five days after receiving notification of a designation under subsection (a), of his denial of the designation, such party or guarantor shall advertise the designation and the procedures by which claims may be presented to such party or guarantor, in accordance with regulations promulgated by the Secretary. Advertisement under the preceding sentence shall begin no later than fifteen days after the date of the designation made under subsection (a). If advertisement is not otherwise made in accordance with this subsection, the Secretary shall promptly and at the expense of the responsible party or the guarantor involved, advertise the designation and the procedures by which claims may be presented to the responsible party or guarantor. Advertisement under this subsection shall continue for a period of no less than thirty days.

(c) ADVERTISEMENT BY THE SECRETARY.—If—

(1) the responsible party and the guarantor both deny a designation within five days after receiving notification of a designation under subsection (a),

(2) the source of the oil pollution was a public vessel, or

(3) the Secretary is unable to designate the source or sources of the oil pollution under subsection (a),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Trust Fund.

SEC. 407. CLAIMS SETTLEMENT.

(a) PRESENTATION TO RESPONSIBLE PARTY OR GUARANTOR.—Except as provided in subsection (b), all claims shall be presented to the responsible party or guarantor of the source designed under section 406(a).

(b) PRESENTATION TO TRUST FUND.—Claims may be presented to the Trust Fund—

(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 406(c);

(2) by a responsible party who may assert a claim under section 403(a); or

(3) by the Governor of a State for cleanup costs incurred by that State.

(c) ELECTION.—If a claim is presented in accordance with subsection (a) and—

(1) each person to whom the claim is presented denies all liability for the claim, or

(2) the claim is not settled by any person by payment within 180 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to section 406(b), whichever is later,

the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Trust Fund. Such an election shall be irrevocable and exclusive.

(d) UNCOMPENSATED DAMAGES.—If a claim is presented in accordance with subsection (a) and full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 404 or because the responsible party and his guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Trust Fund.

(e) TRANSMITTAL OF CLAIM AND DOCUMENTS.—In the case of a claim which has been presented to any person under subsection (a) and which is being presented to the Trust Fund under subsection (c) or (d), that person, at the request of the claimant, shall transmit the claim and supporting documents to the Trust Fund. The Secretary may, by regulation, prescribe the documents to be so transmitted and the terms under which they are to be transmitted.

(f) PROCEDURES.—The Secretary shall establish procedures and standards for the prompt appraisal and settlement of claims against the Trust Fund, including procedures for ensuring the rapid and equitable settlement of claims submitted by the Governor of any State for cleanup costs incurred by that State.

(g) USE OF PRIVATE ORGANIZATIONS AND FEDERAL PERSONNEL.—The Secretary may use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Trust Fund and may contract for those facilities and services. To the extent necessitated by extraordinary circumstances, where the services of private organizations or State agencies are inadequate, the Secretary may use Federal personnel, on a reimbursable basis, to process claims against the Trust Fund.

(h) JUDICIAL REVIEW.—Any claimant, or any other person suffering legal wrong because of, or adversely affected or aggrieved by, a final determination of the Secretary with respect to a claim, may bring an action for judicial review of the determination in accordance with chapter 7 of title 5, United States Code. Such action shall be brought under section 409 and shall be the exclusive judicial remedy with respect to such final determination of the Secretary. Such an action shall be filed not later than thirty days after the Secretary issues notification of the final determination. Venue for any such action shall lie in any district wherein the claimant resides, in addition to any district described in section 409(b).

(i) ACTIONS AGAINST RESPONSIBLE PARTY OR GUARANTOR.—(1) SERVICE OF PLEADINGS ON TRUST FUND.—In any action brought under this subtitle against a responsible party or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Trust Fund at the same time those pleadings are served upon the opposing parties.

(2) INTERVENTION OF TRUST FUND.—The Trust Fund may intervene as a party as a matter of right in any action in which a complaint has been served upon it under paragraph (1).

(3) ADMISSION OF LIABILITY.—In any action to which the Trust Fund is a party, if the responsible party or his guarantor admits liability under this subtitle, the Trust Fund shall be dismissed therefrom to the extent of the admitted liability.

(4) EFFECT OF JUDGMENT.—If the Trust Fund has been served a copy of the complaint and all subsequent pleadings in an action referred to in paragraph (1), the Trust Fund shall be bound by any judgment entered therein, whether or not the Trust Fund was a party to the action.

(5) FAILURE TO SERVE PLEADINGS.—(A) If the plaintiff fails to serve a copy of the complaint upon the Trust Fund as required by paragraph (1), the plaintiff shall not recover from the Trust Fund any sums not paid by the defendant.

(B) If the defendant fails to serve a copy of the initial answer to a complaint upon the Trust Fund as required by paragraph (1), the limitation of liability otherwise permitted by subsection (b) of section 404 shall not be available to the defendant.

(C) If neither the plaintiff nor the defendant serves a copy of the complaint and all subsequent pleadings upon the Trust Fund as required in paragraph (1), the Trust Fund may serve a motion for a new trial for the purposes specified in this subparagraph. The motion must be served not later than ten days after the Trust Fund has received notice of the entry of the judgment in the action, but in no case later than ninety days after the entry of that judgment. The Trust Fund must establish in its motion that, due to the failure of the plaintiff or defendant to comply with paragraph (1), the Trust Fund failed to receive timely notice of one or more issues raised in the action, which might affect the liability of the Trust Fund in any case brought under this subtitle. When the Trust Fund does so, the court shall open the judgment, if one has been entered, and shall take additional pleadings and testimony on the identified issue or issues. The court may amend findings of fact and conclusions of law or make new findings and conclusions and direct the entry of a new judgment in the action.

(j) JOINDER OF PARTIES.—In any action brought against the Trust Fund the plaintiff may join any responsible party or his guarantor, and the Trust Fund may implead any person, who is or may be liable to the Trust Fund.

(k) PERIOD OF LIMITATIONS.—No claim may be presented, nor may any action be commenced for damages recoverable under this subtitle, unless that claim is presented to, or that action is commenced against, a responsible party or his guarantor or against the Trust Fund as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under subsection (a) of section 403, or within six years of the date of the incident which resulted in that loss, whichever is earlier.

SEC. 408. SUBROGATION.

(a) RIGHT OF SUBROGATION.—Any person, including the Trust Fund, who compensates any claimant for an economic loss compensable under section 403 shall be subrogated to all rights, claims, and causes of action which that claimant has under this subtitle.

(b) RECOVERY BY TRUST FUND.—

(1) DENIAL OF SOURCE DESIGNATION OR LIABILITY.—In a case in which the Trust Fund has compensated a claimant for a claim presented to the Trust Fund under section 407(b)(1) or 407(c)(1), the Trust Fund shall recover under subsection (a)—

(A) the amount the Trust Fund has paid to the claimant;

(B) interest on that amount for the period beginning on the date on which the claim was first presented by the claimant to the Trust Fund or the responsible party or guarantor and ending on the date on which the Trust Fund is paid by the responsible party or guarantor, except that if the Trust Fund offered to the claimant the amount finally paid by the Trust Fund to the claimant in satisfaction of the claim against the Trust Fund the responsible party or guarantor shall not be liable for interest for the period beginning on the date the Trust Fund made such offer and ending on the date on which the claimant accepted such offer; and

(C) all costs incurred by the Trust Fund by reason of the claim of the claimant against the Trust Fund and by reason of the claim of the Trust Fund against the responsibility party or guarantor.

(2) FAILURE TO SETTLE WHERE PAYMENT BY TRUST FUND EXCEEDS OFFER BY RESPONSIBLE PARTY.—In a case in which the Trust Fund has compensated a claimant for a claim presented to the Trust Fund under section 407(c)(2) where the amount the Trust Fund has paid to the claimant exceeds the largest amount, if any, the responsible party or guarantor offered to the claimant in satisfaction of the claim of the claimant against the responsible party or guarantor, the Trust Fund shall recover under subsection (a)—

(A) the amount the Trust Fund has paid the claimant, except that the portion of such amount in excess of the amount offered to the claimant by the responsible party or guarantor shall be subject to dispute by the responsible party or guarantor;

(B) interest on the portion of such excess, is any, which is recovered by the Trust Fund, for a period determined in the same manner as in paragraph (1)(B); and

(C) all costs incurred by the Trust Fund by reason of the claim of the Trust Fund against the responsible party or guarantor.

(3) FAILURE TO SETTLE WHERE PAYMENT OF TRUST FUND DOES NOT EXCEED OFFER BY RE-

SPONSIBLE PARTY.—In a case in which the Trust Fund has compensated a claimant for a claim presented to the Trust Fund under section 407(c)(2) where the amount the Trust Fund has paid to the claimant is less than or equal to the largest amount the responsible party or guarantor offered to the claimant in satisfaction of the claim of the claimant against the responsible party or guarantor, the Trust Fund shall recover under subsection (a)—

(A) the amount the Trust Fund has paid to the claimant; and

(B) interest—

(i) for the period beginning on the date on which the claim was presented by the claimant to the responsible party or guarantor and ending on the date on which the responsible party or guarantor offered to the claimant the largest amount referred to in this paragraph, except that if the responsible party or guarantor offered such amount within sixty days after the date upon which the claim of the claimant as presented to the responsible party or guarantor or advertising was commenced under section 406, whichever is later, the responsible party or guarantor shall not be liable for interest for such period; and

(ii) for the period beginning on the date on which the claim of the Trust Fund against the responsible party or guarantor was presented to the responsible party or guarantor to the date on which the Trust Fund is paid, inclusive, except that if the responsible party or guarantor offers to the Trust Fund the amount finally paid to the Trust Fund is satisfaction of the claim of the Trust Fund, interest shall not be paid for the period beginning on the date on which such offer is made and ending on the date on which the Trust Fund accepts that offer, inclusive.

(4) SPECIAL RULES.—For purposes of this subsection—

(A) interest shall be calculated in accordance with section 404(e); and

(B) costs recoverable under paragraphs (1)(C) and (2)(C) include, but are not limited to, processing costs, investigating costs, court costs, and attorney's fees.

(c) PAYMENT OF CERTAIN INTEREST TO CLAIMANT.—The Trust fund shall pay over to the claimant that portion of any interest the Trust Fund recovers under subsections (b)(1)(B) and (b)(2)(B) for the period beginning on the date on which the claim of the claimant was first presented to the Trust Fund or the responsible party or guarantor to the date upon which the claimant was paid by the Trust Fund, inclusive.

(d) APPLICATION OF LIABILITY LIMITS.—The Trust Fund is entitled to recover for all interest and costs specified in subsection (b) without regard to any limitation of liability to which the responsible party or guarantor may otherwise be entitled. The payment of such interest and costs by a guarantor shall be subject to section 405(e).

SEC. 409. JURISDICTION AND VENUE

(a) JURISDICTION.—The United States district courts shall have exclusive original jurisdiction over all controversies arising under this subtitle and subtitles B and C, without regard to the citizenship of the parties or the amount in controversy.

(b) VENUE.—Unless otherwise provided in this title, venue shall lie in any district wherein the injury complained of occurred, or wherein the responsible party or guarantor resides, may be found, or has his principal office. For purposes of this section, the Trust Fund resides in the District of Columbia.

SEC. 410. RELATIONSHIP TO OTHER LAW.

(a) PREEMPTION.—Except as provided in this title, or in section 9507 of the Internal Revenue Code of 1954—

(1) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for an economic loss compensable under this subtitle.

(2) no person may be required to contribute to any fund, the purpose of which is to compensate for damages for an economic loss described in section 403(a), except that, for a period of three years beginning on the effective date of this section, any State which on such date has in effect a statute that requires such contributions may continue to require such contributions within the limits established by such statute as those limits exists on such date, and

(3) no person may be required to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim compensable under this subtitle.

(b) STATE FINANCING OF PREPARATION FOR OIL POLLUTION CLEANUP.—Nothing in this title shall preclude any State from imposing a tax or fee upon any person or upon oil in order to finance the purchase and prepositioning of oil pollution cleanup and removal equipment or to finance other preparations for responding to a discharge of oil which affects such State.

(c) ACTIONS BY TRUST FUND.—Nothing in subsection (a) shall prohibit an action by the Trust Fund under any other provision of law to recover compensation paid under this subtitle.

SEC. 411. PENALTIES.

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 405 or the regulations issued thereunder or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. The Secretary may compromise, modify, or remit with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

SEC. 412. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years beginning on or after October 1, 1985, such sums as may be necessary to carry out this title.

Subtitle B—Report and Coordination With Other Provisions

SEC. 421. ANNUAL REPORT.

The Secretary shall report annually to the Congress on the activities of the Trust Fund during the preceding year. The Secretary shall include in any such report any recommendations for legislative changes needed for the Trust Fund to carry out the purposes of this title.

SEC. 422. COORDINATION WITH OTHER PROVISIONS OF THIS ACT.

(a) If any provision of this title provides that the balance in any fund (hereinafter in this subsection referred to as the "transferor fund") is to be transferred to the Trust Fund, any claim which arises before the effective date of such transfer (to the extent such claim would have been payable out of the transferor fund), shall be payable out of the Trust Fund.

(b) If any provision this title authorizes amounts to be expended from the Trust Fund which are not authorized by title V (or an amendment made by title V), such provision shall have no force or effect.

Subtitle C—Regulations, Effective Dates, and Savings Provisions

SEC. 441. EFFECTIVE DATES.

(a) Provisions Taking Effect on Date of Enactment.—This section, section 401, section 402, section 412, subtitle B, section 442(a)(1) and (3), section 413, 444, and each provision of subtitle A that authorizes the promulgation of regulations shall be effective on the date of the enactment of this title.

(b) Subtitle D.—Subtitle D shall take effect on the first date on which both the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage are in force with respect to the United States.

(c) Provisions Taking Effect in 180 Days.—All other provisions of this title, and the regulations issued under this title, shall take effect 180 days after the date of enactment of this title, except that the penalty prescribed by section 411 for failure to comply with the requirements of section 405 or the regulations issued thereunder shall not be effective until the ninetieth day after issuance of those regulations or the two hundred and seventieth day after the date of enactment of this title, whichever is earlier.

(d) Regulations Respecting Financial Responsibility.—Any regulation respecting financial responsibility, issued pursuant to any provision of law repealed by section 442, and in effect on the day immediately preceding the effective date of section 442 shall remain in force until superseded by regulations issued under subtitle A.

SEC. 442. CONFORMING AMENDMENTS.

(a) Trans-Alaska Pipeline Authorization Act.—(1) The first sentence of subsection (b) of section 204 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(b); 87 Stat. 586) is amended by inserting "in the State of Alaska" after "any area" and by inserting "related to the trans-Alaska oil pipeline" after "any activities". Such subsection is further amended by inserting at the end thereof the following new sentence: "This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 401 of the Comprehensive Oil Pollution Liability and Compensation Act.".

(2) Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) is repealed. Such repeal shall not affect the applicability of such subsection to claims arising before the effective date of this paragraph. Notwithstanding section 441, the repeal of—

(A) paragraph (4) of such subsection (establishing the Trans-Alaska Pipeline Liability Fund),

(B) paragraph (6) of such subsection (to the extent it permits costs of administration to be paid from the Fund and permits amounts in the fund to be invested), and

(C) paragraph (8) of such subsection (permitting recovery by subrogation),

shall only become effective upon the payment by the Board of Trustees of the Trans-Alaska Pipeline Liability Fund of all claims certified under paragraph (3) of this subsection, the rebate of all remaining amounts under paragraph (3) of this subsection, and the completion of all actions required to carry out paragraph (3) of this subsection.

(3)(A) Not later than 210 days after the date of enactment of this paragraph, the Board of Trustees of the Trans-Alaska Pipeline Liability Fund shall certify to the Secretary of Transportation the total amount of claims outstanding against such Fund, as of the effective date of paragraph (2) of this subsection. The amount in the Trans-Alaska Pipeline Liability Fund exceeding the total amount certified under the preceding sentence shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(B) After the settlement of all claims described in subparagraph (A) and the completion of all actions, if any, by the Trans-Alaska Pipeline Liability Fund for recovery of amounts paid on such claims, the remaining amounts in such Fund shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(C) Whenever a rebate is made on a pro rata basis to the owners of oil under subparagraph (A) or (B), each such owner's share of the rebate shall be an amount determined by dividing the amount contributed by such owner to the Trans-Alaska Pipeline Liability Fund by the total amount contributed by all such owners to such Fund.

(D) Trustees and former trustees of the Trans-Alaska Pipeline Liability Fund who were designated by the Secretary of the Interior shall not be subject to any liability incurred by that Fund or by the present and past officers and trustees of that Fund, other than liability for gross negligence or willful misconduct.

(b) INTERVENTION ON THE HIGH SEAS ACT.—Section 17 of the Intervention on the High Seas Act (33 U.S.C. 1486; 88 Stat. 10) is amended to read as follows:

"SEC. 17. The Oil Spill Liability Trust Fund established under section 9507 of the Internal Revenue Code of 1954 shall be available to the Secretary for actions and activities relating to oil pollution (as defined in section 401 of that Act), or the substantial threat of oil pollution, taken under section 5 of this Act.".

(c) FEDERAL WATER POLLUTION CONTROL ACT.—Section 311 of the Federal Water Pollution Control Act is amended as follows:

(1) Subsection (a) is amended by striking out the period at the end of paragraph (17) and inserting in lieu thereof a semicolon and by adding at the end the following new paragraph:

"(18) 'person in charge' means the individual immediately responsible for the operation of a vessel or facility.".

(2) Paragraph (5) of subsection (b) is amended in the last sentence by inserting after "person" the following: "or his employer".

(3) Subparagraph (A) of paragraph (6) of subsection (b) is amended—

(A) in the first and second sentences, by striking out "or person in charge" each place it appears and inserting in lieu thereof "person in charge, or employer of such person in charge"; and

(B) in the third sentence, by striking out "the owner or operator" and inserting in lieu thereof "whoever being".

(4) Subparagraph (B) of paragraph (6) of subsection (b) is amended in the first and second sentences by striking out "or person in charge" each place it appears and inserting in lieu thereof "person in charge, or employer of such person in charge".

(5) Subsection (c)(2)(H) is amended by striking out "from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal" and inserting in lieu thereof the following: ", in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred in such removal from the Oil Spill Liability Trust Fund".

(6) Subsection (d) is amended by striking out the last sentence.

(7) Subsection (f), (g), and (i) of section 311 of the Federal Water Pollution Control Act shall not apply with respect to any discharge of oil resulting in damages for which a claim may be asserted under subtitle A of this title.

(8) Subsection (i) is amended by striking out "(1)" after "(i)" and by striking our paragraph (2) and (3).

(9)(A) Subsection (k) is repealed, effective upon the payment from the fund established by such subsection of all claims certified under subparagraph (B) and all remaining amounts to the general fund of the Treasury under subparagraph (B).

(B) Not later than 180 days after the effective date of this paragraph, the Secretary of Transportation shall certify to the Secretary of the Treasury the total amount of the claims outstanding against the fund established by subsection (k) as of the effective date of this paragraph. The amount in such fund exceeding the total amount certified shall be transferred to the general fund of the Treasury. If the amount paid in settlement of such claims is less than the amount so certified, the remainder shall be transferred to the general fund of the Treasury. Any amounts received by the United States under section 311 with respect to such claims after the effective date of the repeal of subsection (k) shall be deposited in the general fund of the Treasury.

(10) Subsection (l) is amended by striking out the second sentence.

(11) Subsection (p) is repealed.

(12) Section 311 is amended by adding at the end thereof the following new subsection:

"(s) The Oil Spill Liability Trust Fund shall be available to carry out subsections (c), (d), (i), and (l) as those subsections relate to discharges of oil. Any amounts received by the United States under this section with respect to claims arising on or after the effective date of this subsection shall be deposited in the Oil Spill Liability Trust Fund.".

(d) DEEPWATER PORT ACT OF 1974.—The Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.; 88 Stat. 2126) is amended as follows:

(1) Section 4(c)(1) is amended by striking out "section 18(1) of this Act" and inserting in lieu thereof "section 405 of the Comprehensive Oil Pollution Liability and Compensation Act".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), and (n) of section 18 are repealed and subsections (c), (k), and (m) of section 18 are redesignated as subsections (b), (c), and (d), respectively.

(3) Paragraph (3) of subsection (b) of section 18 (as redesignated by paragraph (2)) is amended by striking out "Deepwater Port Liability Fund established pursuant to subsection (f) of this section." and inserting in lieu thereof "Oil Spill Liability Trust Fund.".

(4) Subsection (c) of section 18 (as redesignated by paragraph (2)) is amended to read as follows:

"(c) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.".

(5) Any amounts remaining in the Deepwater Port Liability Fund established by

section 18(f) of the Deepwater Port Act of 1974 shall be deposited in the Oil Spill Liability Trust Fund. The Oil Spill Liability Trust Fund shall assume all liability incurred by the Deepwater Port Liability Fund under the Deepwater Port Act of 1974.

(e) Outer Continental Shelf Lands Act Amendments of 1978.—Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95-372) is repealed. Any amounts remaining in the Offshore Oil Pollution Compensation Fund established under section 302 of that title shall be deposited in the Oil Spill Liability Trust Fund established by subtitle B of this title. The Oil Spill Liability Trust Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund under title III of the Outer Continental Shelf Lands Act Amendments of 1978.

SEC. 443. REGULATIONS AND DELEGATION OF AUTHORITY.

The Secretary of Transportation may prescribe regulations to carry out this title.

SEC. 444. SEPARABILITY.

If any provision of this title or the applicability thereof is held invalid, the remainder of this title shall not be affected thereby.

Subtitle D—Implementation of Conventions

SEC. 461. RECOGNITION OF THE INTERNATIONAL FUND.

The International Oil Pollution Compensation Fund established by article 2 of the International Fund Convention is recognized under the laws of the United States as a legal person and shall have the capacity under the laws of the United States to contract, to acquire and dispose of real and personal property, and to institute and be a party to legal proceedings. The Director of the International Fund is recognized as the legal representative of the International Fund. The Director shall be deemed to have appointed irrevocably the Secretary of State his agent for service of process in any action against the International Fund in any court in the United States.

SEC. 462. SERVICE OF PROCESS AND INTERVENTION.

(a) Service of Process on Funds.—In any action brought in a court in the United States against the owner of a ship or his guarantor under the Civil Liability Convention, the plaintiff or defendant, as the case may be, shall serve a copy of the complaint and any subsequent pleading therein upon the International Fund and the Oil Spill Liability Trust Fund at the same time the complaint or other pleading is served upon the opposing parties.

(b) Intervention.—The International Fund may intervene as a party as a matter of right in any action brought in a court in the United States against the owner of a ship or his guarantor under the Civil Liability Convention.

(c) Effect of Judgment.—If the International Fund has been served a copy of the complaint and all subsequent pleadings in an action referred to in subsection (a), the International Fund shall be bound by any judgment entered therein, whether or not the International Fund was a party to the action.

SEC. 463. EXEMPTION FROM TAXATION.

The International Fund and its assets shall be exempt from all direct taxation in the United States.

SEC. 464. PAYMENT OF CONTRIBUTIONS.

(a) Payments to be Made from Oil Spill Liability Trust Fund.—The amount of any contribution to the International Fund which is required to be made under article 10 of the International Fund Convention by any person with respect to oil received in any port, terminal installation, or other installation located in the United States shall be paid to the International Fund from the Oil Spill Trust Fund. Before the International Fund Convention enters into force with respect to the United States, the President shall make, and deposit with the Secretary-General of the International Maritime Organization, a declaration under article 14 of the International Fund Convention that the United States assumes the obligation to pay contributions under article 10 of such Convention in respect of oil received within the territory of the United States and that such amount will be paid from the Oil Spill Liability Trust Fund.

(b) Information.—The Secretary shall, by regulation, require persons who are required to make contributions with respect to oil received in any port, terminal installation, or other installation in the United States under article 10 of the International Fund Convention to provide such information relating to that oil as may be necessary to carry out subsection (a).

SEC. 465. JURISDICTION OF DISTRICT COURTS.

(a) Jurisdiction.—The United States district courts shall have exclusive original jurisdiction of all controversies arising under the Civil Liability Convention or the International Fund Convention in—

(1) the territory, including the territorial sea, of the United States, or

(2) the exclusive economic zone of the United States established by Proclamation Numbered 5030, dated March 10, 1983,

without regard to the citizenship of the parties or the amount in controversy.

(b) Venue.—Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For purposes of this subjection, the International Fund shall reside in the District of Columbia.

SEC. 466. RECOGNITION OF JUDGMENTS.

Any final judgment of a court of any nation which is a party to the Civil Liability Convention or the International Fund Convention in an action for compensation under either such convention shall be recognized by any court of the United States or of a State when that judgment has become enforceable in such nation and is no longer subject to ordinary forms of review, except where—

(1) the judgement was obtained by fraud; or

(2) the defendant was not given reasonable notice and a fair opportunity to present his case.

SEC. 467. FINANCIAL RESPONSIBILITY.

(a) U.S. Documented Ships.—The owner of each ship which is documented under the laws of the United States and is carrying more than two thousand tons of oil in bulk as cargo shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility in amounts sufficient to cover the maximum liability of such owner for pollution damage arising from one incident under the Civil Liability Convention. The Secretary shall issue a certificate to each such owner who complies with this paragraph, in the form and manner required by the Civil Liability Convention.

(b) U.S. Owned Ships.—With respect to any ship owned by the United States, the Secretary shall issue a certificate stating that the ship is owned by the United States and that the ship's liability is covered within the limits of liability prescribed by the Civil Liability Convention.

(c) Other Ships.—The owner of each ship (other than a ship to which subsection (a) or (b) applies), wherever registered, which is carrying more than two thousand tons of oil in bulk as cargo and which enters or leaves a port or offshore terminal in the United States (including the territorial seas) shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility in amounts sufficient to cover the maximum liability of such owner for pollution damage arising from one incident under the Civil Liability Convention. The owner of a ship which is registered in, or flying the flag of, a nation which is a party to the Civil-Liability Convention shall be considered to have met the requirements of this paragraph if the ship is carrying a certificate issued by such nation attesting that insurance or other financial security is in force which meets the requirements of such Convention.

(d) Withholding Clearance.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any ship which does not have a certificate showing compliance with the requirements of financial responsibility under subsection (a) or (c).

(e) Denying Entry and Detaining Vessels.—The Secretary of the department in which the Coast Guard is operating may (1) deny entry to any facility, to any port or place in the United States, or to the navigable waters, or (2) detain at the facility or at the port or place in the United States, any vessel subject to this section that, upon request, does not produce the certificate required under this section or regulations issued hereunder.

SEC. 468. CIVIL PENALTY.

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 464(b) or 467, the regulations issued under either such section, or any denial or detention order under section 467(e) shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. The Secretary may compromise, modify, or remit with or without conditions any civil penalty which is subject to imposition or which has been imposed under this subsection. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

SEC. 469. WAIVER OF SOVEREIGN IMMUNITY.

The United States waives all defenses based on its status as a sovereign State with respect to any controversy arising under the Civil Liability Convention or the International Fund Convention relating to any ship owned by the United States and used for commercial purposes.

SEC. 470. RULES AND REGULATIONS.

The Secretary may issue such rules and regulations as are necessary to implement the Civil Liability Convention and the International Fund Convention.

SEC. 471. DEFINITIONS.

For purposes of this subtitle—

(1) terms defined in subtitle A have the same meanings when used in this subtitle;

(2) the term "Civil Liability Convention" means the International Convention on Civil Liability of Oil Pollution Damage, 1984;

(3) the term "International Fund" means the International Oil Pollution Compensation Fund established by article 2 of the International Fund Convention; and

(4) the term "International Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

Mr. STUDDS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts [Mr. Studds].

The amendment was agreed to.

Mr. ECKART of Ohio. Mr. Chairman, I ask unanimous consent that after consideration of the Frank amendment and any amendments thereto there be 20 minutes debate on the Edgar amendment which was adopted to title III. The time would be equally divided and controlled by Representative EDGAR and a Member opposed to that amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

Mr. LENT. Mr. Chairman, reserving the right to object, I do so for the purpose of hearing from the gentleman from Ohio what it is that he is proposing.

I yield to the gentleman for his response.

Mr. ECKART of Ohio. At the time of the adoption of this amendment late in the evening on Thursday night, there were approximately 86 Members who, for various reasons of importance to them and their districts or to other legislative business, were unable to either attend and participate in that debate or to ultimately make the rollcall vote. That number represents about 1 out of 5 of our colleagues at that very late hour who, unfortunately, were not able to fully understand and participate in the consequences of that debate.

What I propose here in a manner not inconsistent with what has been done in other bills at other times is to allow those 86 Members to hear, in an abbreviated version, the debate revolving around this very important amendment which was decided by a very small margin.

Additionally, Mr. Chairman, continuing under the reservation of objection of the gentleman from New York, it has come to this gentleman's attention that several individual groups which signed a letter that was circulated on the floor of the House have since repudiated their endorsement either as having not been involved or now not supporting the amendment

Clearly, in light of the fact that there have been either substantial changes——

POINT OF ORDER

Mr. EDGAR. Mr. Chairman, I have a point of order.

The CHAIRMAN. The gentleman will state it.

Mr. EDGAR. Mr. Chairman, the reservation has been made on this unanimous-consent request. The gentleman from Ohio is now debating the substance of the issue, and I think that we ought to raise the question of whether or not a reservation will in fact take place on this issue.

Mr. ECKART of Ohio. Mr. Chairman, may I be heard on this point of order?

The CHAIRMAN. The gentleman has a right to be heard under the reservation of the gentleman from New York who yielded to him for the purposes of explaining why he was making the unanimous consent request of the committee.

Mr. ECKART of Ohio. I thank the Chair.

Mr. Chairman, I would reply and give to the offeror of the point of order my purpose of placing this unanimous consent request, and to raise the issues that would be discussed in the course of the debate, certainly I think, would influence the body as to whether or not they would like to have an additional airing of the changed issues that have intervened in the last several days.

Clearly, a matter of such great substance and importance which the gentleman advocated so eloquently on the floor Thursday evening deserves that full and complete airing particularly for those more than 20 percent of the Members of the House who, because of commitments and other legislative matters were unable to attend.

In light of these changed circumstances, in light of these changed endorsements, in fact, even repudiations of alleged endorsements, many of which we have not had the time to reexamine as to their veracity or continued accuracy, and in light of the fact that 86 of our colleagues did not hear this debate on this most critical issue that my colleague from Pennsylvania cited so wonderfully and eloquently last Thursday evening, I think a sense of fairness and fair play would auger well for a very limited, very abbreviated debate, the time to be equally divided between the proponents and the opponents after the consideration of the amendment of the gentleman from Massachusetts who has waited so long and patiently.

It is merely a question of fair play I would point out to my colleagues. I thank the gentleman from New York for reserving.

Mr. LENT. I thank the gentleman for his explanation.

Mr. Chairman, under my reservation

of objection I yield to the gentleman from Pennsylvania [Mr. Edgar].

Mr. EDGAR. I thank the gentleman for yielding to me.

Mr. Chairman, the gentleman from Ohio said that there are changed circumstances, and there are.

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Mr. Chairman, if the gentleman will yield further, the other day when we were arguing this debate, we did not have the shopping list of all the groups that have in fact now endorsed the amendment. We feel very confident about the support that is growing on this issue, and we note very clearly that today under 1-minute speeches there were ample opportunities to speak. In fact, those opponents of the Edgar-Sikorski amendment took that opportunity in 1-minute speeches.

We note that the hour is late, that it is time for us to pass a strong Superfund bill, and I would urge the author of this request to amend his unanimous-consent request to 5 minutes on each side, so that each, the proponent and opponent of the position, could clearly state what the amendment says, and then we could cast a vote.

In the pressure of time, I would hope that the gentleman would rephrase his unanimous-consent request. If he does not, I think I will be constrained to object.

Mr. LENT. Mr. Chairman, further reserving the right to object, I am happy to yield under my reservation to the gentleman from Ohio for any purpose that he might have in mind.

The CHAIRMAN. First, the Chair would observe that we had 7½ minutes of debate on one side and 7½ minutes on the other side on both the Duncan and Downey amendments.

The Chair now recognizes the gentleman from Ohio [Mr. Eckart].

Mr. ECKART of Ohio. Mr. Chairman, if the Chair's suggestion on the gentleman's reservation is correct, what I would be willing to do is to take the suggestion of the gentleman and amend my unanimous-consent request to limit it to 15 minutes of debate that would be equally divided, in light of the precedent that has been created earlier this afternoon.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

Mr. SNYDER. Mr. Chairman, reserving the right to object, and I shall not object, but in view of the fact that we have perfunctory motions available moving to strike the requisite number of words, I would like to see, after this is agreed to, that the gentleman then makes a unanimous-consent request that debate on the bill and all amendments thereto conclude at the conclusion of that vote.

Mr. EDGAR. Mr. Chairman, will the gentleman yield under his reservation of objection?

Mr. LENT. Mr. Chairman, I am happy to yield to the gentleman from Pennsylvania [Mr. Edgar].

Mr. EDGAR. Mr. Chairman, I think the gentleman makes a good point. There is under the rules of the House the opportunity to move to strike the last word, and I think if the gentleman agrees to the 7½ minutes on each side, we can adequately describe the amendment, and not take the time of the House through additional 5-minute-rule time which would be available to us. So I would hope the gentleman would suggest that after the Barney Frank amendment and after we have 7½ minutes on either side on the Edgar-Sikorski proposal, all time on this bill and all other amendments thereto appertaining would in fact end, and we would move to full consideration in the House.

Mr. ECKART of Ohio. Mr. Chairman, will the gentleman yield so that I may restate my unanimous-consent request?

Mr. LENT. Mr. Chairman, I yield to the gentleman from Ohio [Mr. Eckart].

Mr. ECKART of Ohio. Mr. Chairman, I ask unanimous consent that after consideration of the Frank amendment and any amendment thereto, there be 15 minutes of debate on the Edgar amendment adopted to title III, that the time would be equally divided and controlled by Representative Edgar and a Member opposed thereto, and that all debate on the bill and the balance of the bill would conclude at the conclusion of this 15 minutes.

Mr. SNYDER. Mr. Chairman, I withdraw my reservation of objection.

Mr. LENT. Mr. Chairman, based on the gentleman's explanation and the understanding arrived at, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the final request of the gentleman from Ohio [Mr. Eckart]?

There was no objection.

The CHAIRMAN. The Chair will state that we will now proceed with the 50 minutes of debate on the Frank amendment.

The Chair recognizes the gentleman from Massachusetts [Mr. FRANK].

AMENDMENT OFFERED BY MR. FRANK

Mr. FRANK. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FRANK: Page 439, after line 4, add the following:

TITLE VI—FEDERAL CAUSE OF ACTION

Sec. 601. Definitions.

For purposes of this title:

(1) MEDICAL COSTS.—The term "medical costs" means the costs of all appropriate medical, surgical, hospital, nursing care, ambulance, and other related services, drugs, medicines, as appropriate for both diagnosis and treatment, and any rehabilitative programs within the scope of section 103 of the Rehabilitation Act of 1973 (29 U.S.C. 723).

(2) DEPENDENT.—The term "dependent" means with respect to any deceased person the individual or individuals referred to in section 8110 of title 5, United States Code, as in effect on May 10, 1984.

(3) RELEASE.—The term "release" means the discharge, deposit, injection, dumping, spilling, leaking, storing, treating, or placing, of any hazardous substance into or on land, air, or water, except that such term shall not include activities referred to in subparagraphs (B) through (D) of section 101(22) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(4) SUPERFUND TERMS.—The terms "Administrator", "act of God", "hazardous substance", and "facility" shall have the same meaning when used in this title as when used in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

Sec. 602. Liability.

(a) LIABILITY.—Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (d) of this section, the persons described in subsection (b) shall be liable for damages to an individual (and his dependents) if the plaintiff establishes each of the following by a preponderance of the evidence:

(1) There is a release of a hazardous substance from a facility.

(2) The release causes the incurrence of the damages.

(3) The damages are compensable under this title.

(b) PERSONS LIABLE.—The following persons shall be liable under subsection (a):

(1) The owner and operator of the facility at which the release occurred.

(2) Any person who owned or operated the facility at which the release occurred at the time any hazardous substance was disposed of at such facility.

(3) Any person who by contract, agreement, or otherwise made one of the following arrangements:

(A) An arrangement for disposal or treatment by any other party or entity of hazardous substances owned or possessed by such person, at any facility—

(i) which is owned or operated by another party or entity,

(ii) which contains such hazardous substances,

(iii) from which the release occurred.

(B) An arrangement with a transporter for transport of hazardous substances owned or possessed by such person for disposal or treatment by any other party or entity at any facility referred to in clauses (i) through (iii) of subparagraph (A).

(4) Any person who accepts or accepted any hazardous substance for transport to disposal or treatment facilities or sites selected by such person from which such release occurred.

A person described in paragraph (3) or (4) shall be liable under this section only if the plaintiff establishes by a preponderance of the evidence that the type of hazardous substance involved in the disposal or treatment referred to in paragraph (3) or (4) causes the type of damages incurred by the plaintiff.

(c) STRICT; JOINT AND SEVERAL.—(1) The liability of any person under this title shall be strict. Except as provided in paragraph (2) of this subsection, such liability shall be joint and several. Nothing in this section shall be construed to affect the equitable powers of apportionment of any court following an adjudication of liability.

(2) If any defendant in an action under this section establishes by a preponderance of the evidence that the harm for which damages are compensable under this title is divisible, he shall be liable only for his portion of such harm and shall not be jointly and severally liable.

(d) DEFENSES.—(1) There shall be no liability under subsection (a) for any defendant who can establish by a preponderance of the evidence that the exposure to a hazardous substance or the damage resulting from such exposure, was caused solely by one or more of the following:

(A) An act of God.

(B) An act of war.

(C) An act or omission of a thrid party if the defendant establishes each of the following by a preponderance of the evidence:

(i) The defendant exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances.

(ii) The defendant took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions.

(2) Paragraph (1)(C) shall not apply in the case of a third party which is one of the following:

(A) An employee or agent of the defendant.

(B) A person whose act or omission occurs

in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail).

(3) No defendant described in subsection (b)(3) or (4) shall be liable under this section if he establishes by a preponderance of the evidence that both of the following are minimal in comparison to other hazardous substances involved in the release which caused the incurrence of damages:

(A) The amount of the hazardous substance involved in the defendant's arrangement referred to in subsection (b)(3) and the defendant's transportation referred to in subsection (b)(4).

(B) The toxic or other hazardous effects of the hazardous substance involved in the defendant's arrangement referred to in subsection (B)(3) and the defendant's transportation referred to in subsection (b)(4).

(4) No defendant shall be liable under this section if he establishes each of the following by a preponderance of the evidence:

(A) That the defendant is the owner of the real property on or in which the facility is located.

(B) That the defendant did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility.

(C) That the defendant did not contribute to the release of a hazardous substance at the facility through any action or omission. **The defense under this paragraph shall not be available to a defendant who purchased the real property and who knew or reasonably should have known that the property was used for the generation, transportation, storage, or disposal of any hazardous substance.**

(e) CONTRIBUTION.—After adjudication of liability and recovery of damages in any action under this section, any defendant held liable for damages in such action may bring a separate action in the appropriate United States district court to require any other person referred to in paragraph (1), (2), (3), or (4) of subsection (a) to contribute to payment of such damages.

(f) APPORTIONMENT.—Following an adjudication of joint and several liability in an action under this section, the court may apportion damages among parties held jointly and severally liable. In apportioning the damages the court may consider, among other factors, each of the following:

(1) The amount of hazardous substances involved.

(2) The degree of toxicity of the hazardous substances involved.

(3) The degree of involvement by the parties in the generation, transportation, treatment, storage, or disposal of the hazardous substances, taking into account the characteristics of such hazardous substances.

(4) The degree of cooperation by the parties with Federal, State, or local officials to prevent any harm to public health or the environment.

(5) The amount of damages which should justly be attributed to other potentially liable parties who are not, and could not be, brought before the court.

(g) JOINDER.—Joinder of claims and persons in actions under this section shall be in accordance with the Federal Rules of Civil Procedure.

SEC. 603. REALLOCATION OF UNCOLLECTIBLE APPORTIONED SHARES.

Upon a motion made by any plaintiff or defendant in an action under this title not later than 2 years after judgment is entered, the court shall determine whether all or part of the amount for which another jointly liable party is responsible is uncollectible from that liable party, and shall reallocate any uncollectible amount among the other jointly liable parties, according to the ratio of their previously apportioned share of the damages. The jointly liable parties whose shares are reallocated are nonetheless subject to contribution and to continuing liability to the plaintiff.

SEC. 604. EVIDENCE.

The Federal Rules of Evidence shall apply in actions under this title. Any information which tends to establish that exposure to a hazardous substance in question causes or contributes, or does not cause or contribute, to damages compensable under this title of the type or class allegedly suffered by an individual, shall be treated as relevant evidence in an action under this title, including the following:

(1) Any toxicological profile prepared under section 116 of the CERCLA Reauthorization Act of 1985.

(2) Any health effects study carried out under section 104(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(3) An increase in the incidence of injury or illness, or an increase in the incidence of death, in the exposed population above that which is otherwise expected.

(4) Epidemiological studies.

(5) Animal studies.

(6) Tissue culture studies.

(7) Micro-organism culture studies.

(8) Laboratory and toxicologic studies.

SEC. 605. COMPENSABLE DAMAGES.

The following damages shall be compensable under this title:

(1) Any medical expenses, rehabilitation costs, or burial expenses due to personal injury, illness, or death.

(2) Any loss of income or profits or any impairment or loss of earning capacity due to personal injury, illness, or death.

(3) Any pain and suffering which results from personal injury, illness, or death.

(4) Any economic loss and any damages to property, including real and significant diminution in value.

Pain and suffering shall not be compensable under this title for an individual to the extent that such pain and suffering results from such individual's unreasonable fear of experiencing his own physical injury, illness, or death where such individual has not experienced any such physical injury, illness, or death or from such individual's unreasonable fear of another person's personal injury, illness, or death where such other person has not experienced any such physical injury, illness, or death.

SEC. 606. JURISDICTION; COSTS OF LITIGATION.

(a) JURISDICTION.—Any action under this title may be maintained in a district court of the United States in a district in which either the plaintiff or defendant resides or in which the defendant's principal place of business is located, without regard to the amount in controversy. Jurisdiction of the United States district courts over an action under this title shall be concurrent with the jurisdiction of the courts of any State over such an action and nothing in this section shall be construed to affect the jurisdiction of any State court with respect to any action under this title.

(b) COSTS OF LITIGATION.—In issuing any final order in any action under this part, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such award is appropriate.

SEC. 607. STATE LAW.

Nothing in this title shall be construed to preempt, or otherwise affect, any Federal or State law, or rule or principle of Federal or State law, regarding liability for damages in connection with any hazardous substance.

SEC. 608. LIMITATIONS.

(a) 3-YEAR PERIOD.—No action may be brought by any individual under this title after the end of a 3-year period beginning on the later of the following:

(1) The date the individual knew (or reasonably should have known) that the injury, illness, or death or other expense was caused by the hazardous substance concerned.

(2) The date of enactment of this Act.

(b) MINORS AND INCOMPETENTS.—The time limitation described in subsection (a) shall not begin to run—

(1) against a minor, until that minor reaches 18 years of age or has had a legal representative appointed; or

(2) against an incompetent individual, until that individual becomes competent or has had a legal representative appointed.

(c) DAMAGES INCURRED BEFORE ENACTMENT.—No action may be brought by any person under this title for any damages due to the illness, injury, or death of any individual if such damages were incurred more than 10 years before the date of the enactment of this Act.

(d) OTHER STATUTES.—No action may be brought by an individual under this title for any damages if, prior to the enactment of this Act, the statute of limitations has expired for any cause of action which (but for such expiration) would have been available to such individual under any other authority of law for recovery of the same damages and if the rights of such individual under such other authority of law (including the applicable statute of limitations) are equivalent to such individual's rights under this title.

SEC. 609. WORKER'S COMPENSATION.

No employee, or employee's spouse, dependent, relative, or legal representative, who may assert a claim against the employee's employer under a State or Federal workers' compensation law based on the employee's workplace exposure to a hazardous substance shall be entitled to recover any amount under this title from the employee's employer, such employer's insurance carrier, or a fellow employee based on that exposure.

SEC. 610. COLLATERAL RECOVERY.

No person may bring separate actions in both the courts of any State and the courts of the United States for damages compensable under this title which result from harm caused by the release of a hazardous substance.

SEC. 611. ADDITIONAL RECOVERY.

(a) ADDITIONAL AMOUNTS.—No individual who has recovered any amount in an action under this title with respect to harm caused by the release of any hazardous substance shall be prohibited from recovering from the same defendant or defendants an additional amount under this title if—

(1) such individual establishes (in a subsequent action under this title) that—

(A) personal injury, illness, or death which becomes manifest after the prior action was caused by such release, and

(B) such personal injury, illness, or death was not known, and reasonably could not have been known (on the basis of the facts and circumstances regarding the release) at the time the prior action was brought under this title, and

(2) such individual did not receive compensable damages in anticipation that such personal injury, illness, or death would be discovered.

(b) ACTIONS UNDER OTHER LAW.—An individual who previously brought suit in State or Federal court under any other authority of law for damages compensable under this title which were caused by the release of any hazardous substance may not bring an action under this title for the same damages caused by the same release if judgment on the merits was entered or amicable settlement was completed in the prior suit in State or Federal court.

SEC. 612. CLASS ACTIONS.

It is the policy of the Congress to encourage certification of class actions in actions under this title involving common issues of fact or law. In furtherance of that policy, the Congress finds that the requirements of Rule 23 of the Federal Rules of Civil Procedure are met in actions under this title arising from the same release and presenting common issues of fact or law and involving 30 or more potential claimants.

SEC. 613. PUNITIVE DAMAGES.

In any action under this title, punitive damages may be awarded in the case of conduct manifesting a conscious, flagrant indifference to the safety of those persons who might be harmed by a hazardous substance, pollutant, or contaminant and constituting an extreme departure from accepted practice.

SEC. 614. LIABILITY OF THE UNITED STATES.

The United States shall not be liable under this title, either directly or indirectly or through indemnification, in any action brought under this title or under section 1346(b) of title 28 of the United States Code. No State or local government shall be liable under this title either directly or indirectly or through indemnification in any action brought under this title.

Mr. FRANK (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

PARLIAMENTARY INQUIRY

Mr. GLICKMAN. Mr. Chairman, reserving the right to object, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. GLICKMAN. Mr. Chairman, is this an appropriate time to get the Chair's division of time on this particular amendment and how the amendment will be divided in terms of time?

The CHAIRMAN. The Chair was just about to state that.

Pursuant to the unanimous-consent agreement adopted by the Committee on Thursday, December 5, the gentleman from Massachusetts [Mr. Frank] will be recognized for 25 minutes and a Member opposed will be recognized for 25 minutes.

The Chair understands that the gentleman from Kansas [Mr. Glickman] will control the 25 minutes of the opponents.

Mr. GLICKMAN. That is correct, Mr. Chairman.

Mr. KINDNESS. Mr. Chairman, reserving the right to object——

PARLIAMENTARY INQUIRY

Mr. FRANK. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. FRANK. Mr. Chairman, what is the gentleman reserving the right to object to? Nothing is pending.

The CHAIRMAN. The answer to the gentlemen's parliamentary inquiry is that he asked unanimous consent to dispense with further reading of the amendment. The Chair recognizes the gentleman from Ohio [Mr. Kindness] for the purpose of reserving his right to object to that request.

Mr. KINDNESS. I thank the Chair.

My question is a follow-on to the inquiry of the gentleman from Kansas, and that is with respect to the division of time beyond the point discussed. This side has a number of Members who would wish to address the issue, and I would ask the gentleman from Kansas if he would explain his intention.

Mr. GLICKMAN. Mr. Chairman, if I may respond to the gentleman, it is my intention to yield half my time to the gentleman, so I would have 12½ minutes and he would have 12½ minutes.

Mr. KINDNESS. Mr. Chairman, I thank the gentleman.

Mr. GLICKMAN. Mr. Chairman, I withdraw my reservation of objection.

Mr. KINDNESS. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Pursuant to that understanding, without objection, the further reading of the amendment is dispensed with and it may be printed in the Record.

There was no objection.

The CHAIRMAN. The gentleman from Massachusetts [Mr. Frank] is recognized in support of his amendment, and the gentleman has 25 minutes.

The Chair will inquire, is the gentleman trying to yield some time?

Mr. FRANK. No, Mr. Chairman, I was not trying to yield. I might say that the gentleman from Ohio [Mr. Seiberling] has an amendment, and I might defer to him for that purpose.

AMENDMENT OFFERED BY MR. SEIBERLING TO THE AMENDMENT OFFERED BY MR. FRANK

Mr. SEIBERLING. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Seiberling to the amendment offered by Mr. Frank: Section 608 is amended by striking out subsections (c) and (d) and inserting in lieu thereof the following new subsection (c):

(c) Prospective Application.—No action may be brought by any person under this title for any damages due to the illness, injury, or death of any individual if such damages were incurred, and the individual knew or should have known that the illness, injury, or death was caused by the hazardous substance concerned, before the date of the enactment of this Act.

Mr. FRANK. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. SEIBERLING] on his amendment.

Mr. SEIBERLING. Mr. Chairman, I am sympathetic to the purposes of the gentleman from Massachusetts [Mr. FRANK] in offering his amendment.

Toxic tort victims have not only had to suffer the tragic consequences of their exposure to hazardous substances but have also had to face difficult obstacles in the State courts in their attempts to secure adequate compensation for their injuries. The Frank amendment not only makes the legal process more equitable but provides an additional incentive to the industry to do all that it can to protect individuals and communities from such dangerous exposure.

However, the Frank amendment contains one provision which does nothing to strengthen the incentive to prevent such exposure. That provision allows an individual to bring a retroactive Federal cause of action for injuries due to exposure which occurred up to 10 years prior to enactment of this bill. While I am certainly sensitive to the plight of individuals who have been exposed to hazardous waste, I think it is going too far to subject industry to suits for injuries which occurred as much as 10 years before a Federal cause of action was enacted and indeed 5 years before any Superfund legislation was enacted.

Moreover, one purpose of allowing suits by victims is to deter conduct which may cause such injuries, but retroactively allowing suits for past injuries caused by such conduct obviously has no deterrent effect as far as past conduct is concerned.

The purpose of my amendment to the Frank amendment is to remove the retroactive provision and replace it with a provision which applies to a Federal cause of action prospectively only. Under my amendment an individual who suffered an illness or injury due to exposure from hazardous substances and who knew or should have known before enactment of this bill that the injury was caused by such exposure could not bring a Federal cause of action. However, someone who was exposed before enactment but who did not know or had no reason to know that this illness was caused by the exposure would not be barred from bringing such an action.

Mr. Chairman, I think my amendment makes the Frank amendment fairer to all parties, and I urge its adoption.

Mr. GLICKMAN. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, I have no objection to this amendment. I was going to offer a similar amendment myself, but I chose not to.

I think that this amendment does improve the Frank amendment by making its application substantially prospective. I think the Frank amendment still has serious problems even with this amendment in there. This amendment is reasonably prospective. You could still have some claims that occurred prior to the date of the enactment of the statute, but it does improve the amendment.

Mr. Chairman, I have no objection to the amendment and would urge that it be adopted.

Mr. KINDNESS. Mr. Chairman, I yield myself 30 seconds to speak in opposition to the amendment.

This is an example of exactly why the basic amendment should not be considered here on the floor today when we are concerned with Superfund. This is an entirely different and somewhat obtuse part of the law that has to be dealt with. But in this amendment we have language concerning the plaintiff having to know that the injury was caused by the hazardous substance concerned when in fact one cannot identify the hazardous substance concerned, and it is not necessary to do so under the Frank amendment.

The amendment to the Frank amendment does not really do anything to improve it. It is intended to be prospective in application, but it is another example of why this should be taken up and studied in the Committee on the Judiciary and the subcommittee of the gentleman from Kansas.

Mr. Chairman, I urge that the amendment not be adopted.

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Mr. FRANK. Mr. Chairman, I yield myself 2 minutes.

I would prefer to have the amendment that I have offered adopted without the amendment that my good friend, the gentleman from Ohio, has put forward, but prudence suggests that that is not likely to happen; so that I hope that the amendment to the amendment will be adopted.

I think my friends on the other side are in a little bit of a dilemma. One of the sticks with which they wanted to defeat this amendment is in danger of being taken away, so they are going to oppose an amendment which would remove one of the things to which they would otherwise object. That is a perfectly legitimate parliamentary tactic, but we ought to understand what is happening.

They are resisting making the amendment better from their standpoint because they want to have it to be able to argue against.

What the amendment of the gentleman from Ohio will do if it is accepted, and I gather now because of the opposition on the other side that we will have two votes in a row, that is, we will not get to the vote on the amendment of the gentleman from Ohio until the conclusion. We will vote first on his amendment and then on my amendment, as amended, or not.

What we will then be able to deal with is the fundamental question about whether or not you are to be able to sue.

The gentleman from Ohio has dealt with one of the issues that was a major concern before, and that is retroactivity. Some people on the other side like having retroactivity to complain about so they can discredit the underlying cause.

We are going to, I hope, adopt an amendment that will get rid of the retroactivity issue and we can deal with the general issue.

Mr. LENT. Mr. Chairman, will the gentleman just yield for a clarification?

Mr. FRANK. I yield.

Mr. LENT. Mr. Chairman, did I hear the gentleman say this amendment removes all retroactivity from the application of the gentleman's amendment, because as I read this, it does not do anything of the sort.

Mr. FRANK. Well, the intention is to reduce retroactivity substantially.

I should yield to the gentleman from Kansas, because he is the one who drafted this amendment. The gentleman from Kansas, I should tell people, said to me that he thought it would be better, without necessarily committing himself on the amendment, if it had no retroactivity. The gentleman drafted the amendment and he is the one who represented this as substantially removing retroactivity. I believe it does substantially remove it. There might be some possibility of it. Of course, if the gentleman thought it did not go far enough, then it can be dealt with further.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. FRANK] has expired.

Mr. FRANK. Mr. Chairman, I yield myself 1 additional minute.

If the gentlemen on the other side thought that this did not go far enough in reducing retroactivity and they were seriously concerned about retroactivity, they could then offer an amendment that would further reduce it. The amending process is open.

I repeat it does not. What they are doing, on the one hand they are going to object to the possibility of retroactivity to discredit the underlying idea, but at the same time object to either reducing or removing the retroactivity that is there. It clearly makes it substantially less open to retroactivity, and if that were central to the gentleman's concern he could have offered an amendment.

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield?

Mr. FRANK. I yield to the gentleman from Kansas, because he is the drafter of the amendment.

Mr. GLICKMAN. Mr. Chairman, I would say this. I am not going to support the Frank amendment. I think the gentleman deserves the right to perfect his own amendment.

This amendment goes most of the way on retroactivity, not completely, because you could have had an incident that occurred prior to the date of this bill—I want to make it clear—that a person should have known language that could have been in there, but I think that it is much better than without the amendment.

Mr. FRANK. Mr. Chairman, I do not yield further.

Mr. LENT. Mr. Chairman, will the gentleman yield for a clarification?

Mr. FRANK. The gentleman can get time on that side. I am not going to yield further.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. FRANK] has expired.

PARLIAMENTARY INQUIRY

Mr. FRANK. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. FRANK. Mr. Chairman, if there is a rollcall on the Seiberling amendment, does that come out of my 15 minutes?

The CHAIRMAN. No, it does not.

Mr. FRANK. Mr. Chairman, then I yield myself 1 more minute.

I want to make very clear what is involved in the amendment offered by the gentleman from Ohio. It substantially reduces retroactivity. There were some circumstances under which there might be some left. Others are free, of course, to further go after it.

Clearly, people on the other side do not want to see the amendment adopted, because they want to have a better argument against the whole bill.

If in fact the question was whether or not the amendment should be adopted on its merits, it would be virtually unanimous on all sides, given the present situation; so I would hope that we could proceed to a vote on the amendment. I would hope we would not have to take a rollcall and keep Members here another 15 minutes. I an not going to ask for one, but I would hope we could then vote on the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. SEIBERLING] to the amendment offered by the gentleman from Massachusetts [Mr. FRANK].

The amendment to the amendment was agreed to.

The CHAIRMAN. The Chair recognizes the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Mr. Chairman, I yield myself 3 minutes.

First of all, I want to compliment the gentleman from Massachusetts. I think this is an important issue to debate during this bill, but I reluctantly have to oppose it. A similar amendment was defeated, not exactly the same, the amendment is improved from last year by the vote of 208 to 200.

I would encourage my colleagues to think about this very seriously and vote it down.

I would like to make just a couple quick points and when I want to yield to my colleague, the gentleman from Michigan. I want to make the following points:

The real purpose of Superfund is the cleanup of hazardous waste sites, and while I think that a Federal cause of action is interesting, it does turn the Superfund Program into a private compensation program. I do not think that that is what we are trying to do right here. We are trying to clean up sites. I think this kind of an amendment deviates from the basic purpose of the bill.

Second of all, I think the Federal cause of action will substantially reduce the incentives for voluntary action and private cleanups that are in the bill. If a responsible party faces strict joint and several liability for private damage actions, he will be more reluctant to come forward to clean up the site and settle with the Government. Responsible waste disposal will be virtually impossible because this added liability I think will be uninsurable.

I would also like to point out one final thing. I am very interested in the whole subject of civil justice reform, tort liability in this country, relationships between compensation and damage and harm. What I fear this amendment will do will be substantially to expand the utilization of the courts for tort claims in this country at a time when we need to be considering very, very carefully how we want this kind of increased litigation to go forward.

I would note, however, for the record, that there is language in the bill which is very, very important, which deals with the issues of procedural reform in the States. If possible, I would like to engage on my time the gentleman from Michigan [Mr. DINGELL] in a brief colloquy.

The compromise version of Superfund contains an important provision which really addresses the major problem addressed by the Federal cause of action—the fact that currently residents of some States have no right to sue for damages arising from hazardous substances because the State statute of limitations applicable to their claim has already passed before they even know they have been injured.

This provision, called section 203 State Procedural Reform adds a new section 309 to Superfund. This section, which is based on the section 301(e) study mandated by Superfund, provides that State statutes of limitations will not commence until the injured person knew or reasonably should have known that their personal injury or property damages were caused by exposure to a hazardous substance.

Thus, under this provision, all persons, regardless of which State they live in, will be able to sue for damages when they know they have been damaged. This is of particular importance because of the long latency period for many injuries resulting from exposure to hazardous substances, and because both the fact that a person was exposed and the fact that he was harmed by such exposure are often known only at a date much later than their exposure.

I would like to ask the gentleman from Michigan if he will vigorously support this provision in conference with the other body?

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. GLICKMAN. I am glad to yield.

Mr. DINGELL. The answer to the gentleman's question is "Yes."

If the gentleman will continue to yield——

The CHAIRMAN. The time of the gentleman from Kansas [Mr. GLICKMAN] has expired.

Mr. GLICKMAN. Mr. Chairman, I yield myself 30 additional seconds.

Mr. DINGELL. Mr. Chairman, if the gentleman will yield further, section 203 is designed to override the problems which exist with regard to State statutes of limitations and provide uniform commencement dates in all State courts based on the discovery of the injury and its cause for filing damage claims.

This is the reason, or one of the major reasons we have this question of civil actions being permitted along the lines of the Frank amendment.

I will strongly support the language referred to in conference.

Mr. GLICKMAN. I think that is very important, because if that language is adopted it substantially takes care of the problem that I think the gentleman from Massachusetts [Mr. FRANK] is referring to.

Mr. LENT. Mr. Chairman, will the gentleman yield?

Mr. GLICKMAN. I yield to the gentleman from New York.

Mr. LENT. Mr. Chairman, I would also like to agree with the colloquy between the gentleman from Michigan and the gentleman from Kansas.

Mr. GLICKMAN. So the gentleman would agree to support that in conference?

Mr. LENT. I would certainly agree to support that in conference.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. GLICKMAN. I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, just count me in. I will be glad to support that position.

Mr. GLICKMAN. Mr. Chairman, I thank the gentleman.

The CHAIRMAN. The time of the gentleman from Kansas [Mr. GLICKMAN] has expired.

Mr. GLICKMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Louisiana [Mr. BREAUX].

Mr. BREAUX. Mr. Chairman, I think the question we are here to decide is who is on first?

I want to just make one point very briefly and that is the biggest reason in committee why the argument was made that we needed a Federal cause of action was because we had a lot of problems with the various States that had different statutes of limitations as to when they had to sue to stop some of these spills or some of the actions against people who were causing the damage. The legislation in the committee bill addresses that.

What it says, and I think it already takes care of some of the basic concerns brought about by the Frank amendment, it simply says that if States have a statute of limitations period that is short, which means that a plaintiff has a shorter time in which to bring a cause of action, that that State short statute of limitations will be superseded by the Federal statute, which would mean that any citizen anywhere in any State would have a long enough and a sufficient amount of time to bring a suit against anyone who he thinks is not following the laws under the Superfund legislation.

So what I am saying is that the legislation already takes care of any problems that anyone from any State might have by having confusion as to how long he has or she has in which to bring a cause of action to enforce the provisions of the Superfund legislation. Those problems have already been taken care of in the bill as it now stands.

I think the amendment, therefore, is not necessary if it is being offered for the purpose of clearing up the statute of limitations problem. It has already been taken care of by the committee and I think we should stick with the committee product in that regard.

Mr. KINDNESS. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. FISH].

(Mr. FISH asked and was given permission to revise and extend his remarks.)

Mr. FISH. Mr. Chairman, I rise

today in opposition to the amendment before us to create a Federal cause of action under the Superfund Program. I'd like to explain where I am coming from on this issue. My record on environmental issues speaks for itself and is a record I am proud of. I support the strengthening of the Superfund Program and supported the Edgar amendment on community right-to-know and the Judiciary Committee's position on citizen suits. I am concerned about the health and safety of the American people. This amendment however, is not in our best interest.

While this amendment is not identical to the language rejected by the full House of Representatives last year—208-200 record vote—its fundamental defects remain the same. In fact, these defects have been amplified.

The purpose of the Superfund law is to provide a Federal response to the urgent need to clean up existing hazardous waste sites. This bill to extend the authorization of the existing Superfund Program, is appropriately focused on cleanup activities. This House has consistently rejected expanding the Superfund statute to deal with legal rights aimed at compensation for damages arising out of injuries caused by the toxic substances involved. This approach is, plain and simple, a matter of selecting national priorities.

As the Washington Post stated in a still timely editorial issued in August 1984:

> The Superfund legislation ought not to be diverted into the very separate question of dealing with environmental health damages * * *."

That same editorial noted that a Commission created by section 301(e) of the original Superfund law made up of well-known legal practioners specifically chose not to recommend the creation of a Federal cause of action in the Superfund statute. Among the organizations that concluded that there was "no need" for a Federal civil liability law were the American Bar Association, the Association of Trial Lawyers of America, the American Institute, and the National Association of State Attorneys General.

The language of this amendment contains an extremely weak causal relationship between the actual release of the hazardous substance, the resulting exposure, and the asserted injury caused. Under the language of this amendment, a businessman who has taken every reasonable effort to dispose of a hazardous substance in a responsible manner, nevertheless remains potentially liable for all the injury that may result from that disposal. The liability under the Frank amendment is, with specified exceptions, absolute liability, and it is also joint and several liability.

The defenses available to the generator of a hazardous waste, the transporter of a hazardous waste, or the operator of a hazardous waste site are also extremely limited. In fact, the language in section 602(d)(3)(C) may mean that even if the individual has not contributed any of the hazardous substance to a particular site which is asserted to have caused the injury, he still may have no realistic legal defense available.

This amendment authorizes a new cause of action in Federal district courts—with no diversity requirements and no requirement with respect to a minimum amount in controversy. The amendment further contains a liberal attorney's fee provision that can only result in encouraging plaintiffs to choose Federal courts as their forum, instead or proceeding with their existing, traditional State court remedies.

Under section 608(c) of the amendment, liability is retroactive for a 10-year period dating back from the date of enactment of this bill. This means that an individual will be able to sue, asserting damages resulting from hazardous substances going back to 1975. The Superfund statute that we are extending did not even exist until the year 1980.

Section 604 of the amendment says that the Federal rules of evidence are applicable, but in fact the next sentence of the section disregards and bypasses rule 401 of the Federal Rules of Evidence—which are normally considered in the Judiciary Committee, but that was not the case with this amendment. It deems certain toxicological and other studies relevant, when they would now be ruled irrelevant in a Federal court.

Section 608 of the amendment would establish a discovery rule under this new Federal cause of action. Under its terms, an individual may bring his/her suit within 3 years after discovering that the injury or illness in question was caused by a particular hazardous substance. The effect of applying an open-ended discovery rule and greatly nullifying the statute of limitations, principle has extemely serious and negative implications regarding the ability of a businessman to obtain the necessary personal injury insurance to continue in business. Indeed, major insurers have indicated that this amendment would make major segments of the business community "permanently uninsurable", thereby worsening the lot of injured persons.

This amendment also contains three new sections that were not present in the Federal cause of action proposal rejected by the full House of Representatives. All three of these new sections add new arguments for defeating this amendment. Section 611 of the amendment totally disregards the legal principle of res judicata, allowing an individual plaintiff to sue more than once on the same incident. The language of section 611 would even permit a plaintiff to sue the same defendant more than once under essentially the same cause of action.

In addition, section 612 disregards the current requirements in rule 23 of the Federal Rules of Civil Procedure, with respect to class actions. Finally, section 613 specifically authorizes the assessment of punitive damages in these cases.

Last, proponents of this cause of action have specifically exempted the United States, States, and local governments from liability under this amendment. The Congressional Budget Office last year stated that the potential liability of the United States under such a cause of action would be impossible to estimate and could add significantly to the costs of the Federal Government. By specifically removing the United States, States, and local governments from this liability, the proponents have admitted that liability under this title is essentially indefensible given its scheme of near-absolute, joint, several and noncausal nexus liability. They have also raised a serious equal protection of the laws issue. Why should Government exempt itself from a liability it is imposing on its citizens?

Mr. Chairman, I am personally and deeply committed to a strong Superfund law. There is no question but that the cleanup activities to date under this important statute have been seriously derelict. This bill would authorize a total of $10 billion over the next 5 years and would allow an effective, efficient cleanup program to proceed. I am supportive of the citizen suit provision because I believe that injunctive relief suits are a necessary adjunct to identifying those sites that need immediate cleanup attention.

However, I think it would be extremely counterproductive to approve this defective language. Aside from its complete lack of balance and fairness for one side of the litigation—potential defendants—this amendment should be rejected because it would interfere with and divert the attention of the Government and the private sector from the fundamental purpose of this law. The American people deserve a quick, efficient and final cleanup of hazardous waste sites. This amendment simply does not serve that goal.

Mr. Chairman, I cannot support this amendment and ask my colleagues to do likewise.

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Mr. FRANK. Mr. Chairman, I yield myself such time as I may consume.

Once again, Mr. Chairman, some of the opponents of this are having a little difficulty. This is substantially modified from the amendment that the House defeated previously. It is substantially tighter. It is harder to win under this if you are the plaintiff. It has a great many safeguards.

Opponents, understandably, having succeeded in beating the old amendment with its weaknesses, are loathe to get rid of the weaknesses. In fact, we had circulated by a number of business organizations a denunciation of the amendment in which the amendment was quite unrecognizable. It seemed to me it was spearheaded by the U.S. Chamber of Commerce which, with its unerring instinct for inaccuracy, managed to hold onto all the old shibboleths. In fact, we have heard some of these today.

This does require that you show by a preponderance of the evidence, and I am quoting the bill now:

> A person shall be liable only if the plaintiff establishes by a preponderance of the evidence that the type of hazardous substance involved in the disposable treatment referred to causes the type of damages incurred.

You also have to show by a preponderance of the evidence that the releases of the hazardous substance occurred, that it caused the incurrence of the damages, and that the damages are compensable under the title. It specifically says the Federal rules of evidence will be used.

Retroactivity has been substantially diminished. I was interested to note that when the gentleman cited the provision which clarified State law, and that is an interesting notion here, we are not going to create a Federal cause of action. We will just under this dictate to the 50 States what they are going to do with their own statutes of limitations. Understand what you are being asked to do in the underlying bill without the amendment.

My proposal is the Federal Government ought to offer the Federal courts to people. Instead, we are told, "Oh, no, we will not do that. We will just order all 50 States to do it the way we would like." I think that is all right, but it is hardly the kind of absolute abstention from the legal issue that has been described here.

But the language with regard to potentially retroactive causes is exactly the same there. It is one you should have known. So I think that is a very interesting point.

We were told that under the amendment I have offered, people are going to be able to go to court accessibly, and I think there is a great contradiction here. When the amendment was originally brought up a couple years ago, people said we have problems where we cannot get access to State courts. Now we are being told this amendment that I am offering will bring too many people into court. Simultaneously, though, we are told that the underlying bill makes sure that every one of those people can get into State courts.

So the question is not, by the admission of the opponents of my amendment, not whether more people will be allowed to sue because they very proudly and justifiably pointed out their dicta to the States, saying, "You will have to allow these people into court." The question is not whether or not anyone can get into court, because as I understand what they were saying, if you can get into Federal court under my amendment, you can get into State court under the underlying bill. The question is: Is this of sufficient importance to try and give plaintiffs some uniformity?

The issue of whether or not there will be more people in court, I think, has been mooted by their own emphasis on their underlying amendment. They are proud of the fact that they are letting people get into State courts. The question then is: Is there something inherently wrong about, on this kind of an issue, saying that we ought to be able to get into Federal court? I do not understand why it is perfectly legitimate to tell the State courts, "You are going to let all these people in and we are going to amend all 50 State statutes of limitations to conform to our own but we are not going to do it at a Federal level." I think it is perfectly consistent to do both.

Mr. LENT. Mr. Chairman, will the gentleman from Massachusetts yield just for a question?

Mr. FRANK. I yield to the gentleman from New York.

Mr. LENT. I thank the gentleman for yielding.

Mr. Chairman, the gentleman, as I understood it, said that this amendment does provide the requirement of causation, the same as we have at the common law. I am reading the gentleman's amendment, and he says, "The plaintiff must establish by a preponderance of the evidence that the type of hazardous substance involved in the disposable treatment referred to causes the type of damages incurred."

Mr. FRANK. Mr. Chairman, I will take back my time because the gentleman misstated me.

Mr. LENT. That is not the same as common law causation.

Mr. FRANK. I will take back my time. The gentleman misstated me. I never said that this is the same as common law. I want to assure the gentleman that I cannot remember the last time I discussed the common law in public and I do not intend to do that again. I do not think I have. I never said "the common law."

My point of comparison was, with regard to retroactivity, that the phrase "should have known," dealing with a potential retroactivity, is in the underlying bill in the language you have all brought forward dealing with the right to get into State court, that was the point of comparison.

What I said was, there is language in here that requires you to show some causality. I never mentioned the common law, so your rebuttal of my point about the common law is a rebuttal of a point I never made. I never mentioned the common law and have no intention of doing it.

Mr. LENT. You just have to show generalities.

Mr. DINGELL. Mr. Chairman, will the gentleman yield for a couple of questions so I can understand?

Mr. FRANK. The gentlemen have their own time and I am on somewhat limited time.

Well, I will yield for one question from the gentleman from Michigan.

Mr. DINGELL. I have several questions about the differences between last year's bill and the Frank amendment.

First I would ask the gentleman: Last year's bill permitted lawsuits with regard to disposal, which was defined as depositing the substance on the land or into the water. Is the gentleman's amendment more broad this year than that?

As I understand the gentleman's amendment, it deals also with emissions into the air. Is that correct?

Mr. FRANK. I am sorry. Will the gentleman repeat that? I just want to get the exact language.

Mr. DINGELL. Last year's bill dealt with depositing substances on land or into water. As I understand the gentleman's amendment, it extends it to air. Is that correct?

Mr. FRANK. Air. That is correct.

Mr. DINGELL. With regard to this matter, I understand that it includes air emissions of all types, even those emissions which are permitted under Federal laws such as the Clean Air Act, Federal Water Pollution Control Act, Safe Drinking Water, RCRA, and so forth. Is that correct?

Mr. FRANK. If you go into court and show that you have been harmed by these, then you can sue. In many cases it would be a defense if you could show, as it often is under the law, that you had legal authorization to do it you would have this as a defense. But if things cause harm, you can bring them into court.

I would suggest further to the gentleman that if the gentleman wants to debate the amendment he is entitled to do that, but not on my time.

Mr. DINGELL. I am just trying to understand.

Mr. FRANK. The gentleman is debating the amendment, and he is entitled to do that, but he ought to debate that on his time, not on my time.

Mr. DINGELL. I am trying to ask the gentleman exactly what the amendment means.

Mr. FRANK. I do not yield further to the gentleman to debate against the amendment.

The CHAIRMAN. The gentleman from Massachusetts [Mr. FRANK] does not yield further time.

The gentleman from Massachusetts [Mr. FRANK] has consumed 6 minutes, and he has 12 minutes remaining.

Mr. GLICKMAN. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan [Mr. DINGELL].

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. I thank the gentleman for yielding this time to me.

Mr. Chairman, I was trying to get in the differences between the Frank amendment and the comparable provisions of last year. I think it is important that we should look to see what the Frank amendment in fact does.

The Frank amendment, first of all, covers emissions into the air.

Second, it makes subject-to-suit actions which are permitted under Federal law, such as the Clean Air Act and the Federal Water Pollution Control Act. They become suable under this, regardless of the fact that they are permitted under Federal law.

Beyond this, the Frank amendment includes joint and several liability. The gentleman is a lawyer and understands hard cases make bad law, but bad law makes hard cases.

If you have a refinery in an area which releases benzene, a dry-cleaning establishment, and a gas station, all under the Frank amendment are equally liable to damages. If you sue the refinery, the dry-cleaning establishment, and the gas station, you can collect from any one or all of the three. You can totally ignore the refinery and you could proceed against the gas station and the dry-cleaning establishment, even though they are relatively inoffensive.

If there is a high school in the area which is using a little bit of benzene and causing a little bit of problem, they are equally, under the Frank amendment, liable with all of the other polluters.

It will result in significant increases in litigation over property values because it deals not with health alone but, rather, it deals with questions where there is real and significant diminution in property values near a hazardous waste site. So anybody who wishes to go in and sue in the kind of case that I have alluded to, where you have a school, a dry cleaner, a gasoline station, and an oil refinery, and with the oil refinery being the major polluter and the others being de minimis polluters and the others being polluters who are functioning fully within the requirements of Federal law, they are all responsible for every single damage equally, jointly, and severally liable to all of the persons who live in the area.

This is a sweeping change in the law. It is one which should be considered by the committees of jurisdiction. It goes well beyond the needs of the case. It establishes totally new jurisprudence. It establishes rights which go far beyond the needs of the situation, and it addresses questions far beyond those desirable changes which are made by section 230, which deals with the statute of limitations question.

I rise in opposition to the amendment of the gentleman from Massachusetts [Mr. FRANK]. This amendment in several important respects is broader than the Federal cause of action provision defeated by the House last year. Last year's provision keyed liability to the term "disposal" which was defined as:

> * * * the discharge, deposit, injection, dumping, spilling, leaking, storing, treating, or placing of any hazardous substance *into or on land or water* * * *.

The pending amendment keys liability to the term "release" which is defined as:

> * * * the discharge, deposit, injection, dumping, spilling, leaking, storing, treating, or placing of hazardous substance into or on *land or water or air* * * *.

So the provision has been expanded to include air emissions of all types. For example, benzene is a hazardous substance under Superfund because it is a hazardous air pollutant under section 112 of the Clean Air Act and a hazardous waste listed pursuant to section 3001 of the Solid Waste Disposal Act. Therefore, this broad expansion would allow unwarranted Federal damage actions to be brought against all neighborhood gas stations based on their emissions of benzene vapors from gas pump operations. Further, this provision allows a Federal cause of action against owners and operators of facilities which have released hazardous substances even though those releases were federally permitted under the Federal Water Pollution Control Act, Solid Waste Disposal Act, Clean Air Act, Safe Drinking Water Act, and Marine Protection, Research, and Sanctuaries Act of 1972. Even if these persons are operating in total compliance with the Federal permit, they would be subject to this cause of action.

There are other good and valid reasons to oppose the Federal cause of action amendment. Let me cite a few:

First, the joint and several absolute liability standard established by the amendment is wholly inappropriate in the context of determining personal injury compensation.

This amendment would establish a system of joint and several absolute liability against any party associated with the generation, transportation, or storage of a hazardous substance which causes damage as a result of its release from a facility.

While I strongly agree with this standard for attributing cleanup costs, where the harm, that is contamination of the site, is indivisible, there is no precedent whatsoever in tort law for using such a standard for determining liability for personal injury compensation. Because of the strict liability standard already existing under CERCLA, this provision would make a defendant jointly and severally liable for personal injury or property damage caused primarily or even solely by substances attributable to another person which are stored at the same site. Although a strict, joint, and several liability standard is important and warranted when securing the cleanup of hazardous waste sites, where everyone's chemicals must be addressed, it does not work with respect to personal injury or property damage which can be and should be linked to individual chemicals and thus individual responsibility.

Second, the Amendment will result in a substantial increase in litigation, largely over injury to property values instead of health problems.

It is highly likely that this amendment will result in a substantial increase in litigation, which—particularly in light of its complexity—will severely strain the resources of the Federal judiciary. Ironically, much of this litigation may have less to do with alleged personal injuries than with asserted "real and significant diminution" in property values near a hazardous waste site. It is likely that even where absolutely no personal injury is caused by a release, litigation will result in which thousands of persons living within miles of a hazardous waste site will be joined in one or more class actions asking the court to assess the fair market value of their property, and award them the difference plus their attorneys' fees.

Third, finally, this year's Superfund legislation in section 203, provides important State procedural reforms which respond to the inequities created by some States' statute of limitation laws. **It was these inequities that provided much of the impetus for the Federal cause of action provision last year. The committees of jurisdiction, both Energy and Commerce and Public Works,**

have established a federally required commencement date to state statutes of limitation in section 203 to address this problem.

Thus, the Federal cause of action amendment is unwise and unnecessary, and I urge my colleagues to oppose it.

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Mr. KINDNESS. Mr. Chairman, I yield 2 minutes to the gentleman from Kentucky [Mr. SNYDER].

(Mr. SNYDER asked and was given permission to revise and extend his remarks.)

Mr. SNYDER. Mr. Chairman, I rise in strong opposition to the amendment offered by the gentleman from Massachusetts [Mr. FRANK]. The amendment would create a Federal cause of action for persons alleging that they have been injured by hazardous substances. While all of us are sympathetic to the plight of individuals who suffer personal injury which have been caused by a release of a hazardous substance, State personal injury law is the proper remedy available to those individuals.

In 1980 when Congress initially set up the Superfund law, the question of the appropriateness of a Federal cause of action was an issue considered by the Congress. We declined to authorize such a provision, and instead called for a study of the matter by a distinguished panel of legal experts. That study, undertaken by representatives of the American Bar Association, the American Trial Lawyers Association, the American Law Institute, and the National Association of States Attorneys General concluded that there was no need to establish a new Federal cause of action in this area.

The gentleman's amendment would significantly change some of the basic principles that have evolved in our system of jurisprudence. It would subject persons to enormous liabilities without allowing them defenses that are available under existing law. Liability would be strict, joint and several, which may be an appropriate standard to compel cleanup but is inappropriate in the context of simple tort law. Under this scheme, a person that had acted in good faith and was completely innocent of any wrongdoing or negligence could be subject to personal injury claims of staggering proportions. This would come at a time when environmental liability insurance is almost completely drying up. If we adopt this change, we can write off all of the reasonable provisions in the rest of this bill that seek to alleviate the problems of not having adequate insurance.

My gravest concern about the amendment, however, is that it runs counter to the basic purpose of Superfund, which is the cleanup of hazardous waste sites. Adoption of the Frank amendment will make it almost impossible to get potentially responsible parties to enter into settlements to clean up sites. Instead, companies will be devoting greater resources to litigation in efforts to avoid being held responsible not only for cleanup costs but the rash of personal injury claims that would inevitably follow.

Mr. Chairman, all of us have recognized that it is sometimes difficult for those who suffer from damages which may be caused by exposure to hazardous waste sites to recover in a personal injury case. I believe that revised State statutes and judicial interpretations are moving in the direction of improving remedies in the toxic tort area. I also note that the amendments that have been incorporated into the compromise version of H.R. 2817 now before us significantly move in that same direction. Specifically, the problems associated with restrictive State statutes of limitation are being adequately addressed in this bill. Section 203 of the compromise provides for a uniform approach with respect to State statutes of limitations for people exposed to hazardous substances, requiring that the State's statute may not begin to toll until the plaintiff knew or should have known of the injuries or damages that he or she incurred.

In addition, I note that the bill confers broad authority on EPA and the Agency for Toxic Substances and Disease Registry to undertake health assessments, toxicological profiles and, if necessary, to provide for medical testing and treatment to persons exposed to hazardous waste. While I would have preferred to devote almost all of our resources to cleaning up sites, we have agreed to a limited program for health assessments and medical assistance. I totally oppose, however, the expansion that is being proposed in this amendment to establish a Federal cause of action. The amendment is not needed in light of evolving State law and the procedural reforms in our bill. It will overtax the courts, divert cleanup resources, and impose catastrophic burdens on American industries.

Mr. Chairman, by introducing a new Federal cause of action we will be channeling our resources into an area that the legal experts of this country believe is adequately being dealt with in the State courts. This issue has been extensively reviewed on numerous occasions by different experts. I already referred to the study undertaken pursuant to the original authorization of Superfund. Last year this body fully debated the issue and voted down a Federal cause of action. The Subcommittee on Investigations and Oversight of our Committee on Public Works and Transporation conducted extensive hearings into this basic issue during the 98th Congress. They heard from the legal experts and from persons alleging injury as a result of exposure to hazardous substances. Although the final report has not yet been issued, it is my understanding that the preliminary findings are consistent with the recommendations of the Superfund task force on Federal cause of action. In fact, the evidence that we have seen more recently indicates that State common law is evolving in the direction of providing improved remedies for those injured by exposure to hazardous waste.

Finally, I note that the issue of whether or not to authorize a Federal cause of action was carefully considered by the Committee on the Judiciary this year. After extended deliberations, that committee declined to authorize a new Federal cause of action for toxic torts.

It would be extremely unwise for this body to ignore the recommendations that have been made against the provision by almost every study and legislative review. Accordingly, I urge my colleagues to defeat the amendment by the gentleman from Massachusetts.

Mr. FRANK. Mr. Chairman, I yield myself 3 minutes.

Again, I think I am a little surprised at some of the arguments.

The gentleman from Michigan [Mr. DINGELL] quite eloquently denounced the principle of joint and several liability which is a fundamental principle of Superfund. He sounded in his denunciation of joint and several liability like some opponents of the whole notion of Superfund.

In fact, in my amendment, while it begins with joint and several liability, there are several qualifications. He referred to the person who does minimal damage.

On page 5 on line 16 and following, there are releases from people who make only minimal contributions to the problem. So there is an explicit release for people who are de minimis contributors. That is in the bill explicitly.

On page 4, when it talks about joint and several liability, it immediately follows by saying at line 5, "Nothing in this section shall be construed to affect the equitable powers of apportionment of any court following an ajudication of liability," so the judge can deal with the poor little drycleaner, and it would be unfair situation to go after the drycleaner and nobody else.

There is also explicit affirmation on page 6 of the right of contribution. Anyone held liable may go after other people.

So, yes, we take, as does the Superfund itself, the basic principle of joint and several liability. We qualify it in several ways. We give an explicit release to people who are only de minimis contributors. We allow explicit affirmation of the equitable powers of a court to do apportionment so as to avoid these kinds of horrors, and I think judges would take it. And we explicitly affirm again the right of contribution of joint and several liability as a way to force people to come forward with evidence and to contribute their knowledge so you can know who did what to whom. It does in both the underlying bill when you are assessing liability for cleanup and in this bill when you are assessing liability for damage start with joint and several liability, but it modifies that in my amendment in several ways that I think comport with common sense and fairness.

Again, Members may be opposed to the whole concept, but I think it is a little inconsistent to be putting forward a bill that relies on joint and several liability as its main enforcement mechanism in the cleanup area, but suddenly becomes some terrible attack on jurisprudence when it is being used here, especially since, as I said, the specific questions of apportionment, of contribution and of de minimis release are all explicitly spelled out in the bill.

I reserve the balance of my time.

Mr. KINDNESS. Mr. Chairman, I yield 2 minutes to the gentleman from Florida [Mr. MCCOLLUM].

(Mr. McCOLLUM asked and was

given permission to revise and extend his remarks.)

Mr. McCOLLUM. Mr. Chairman, I want to thank the gentleman for yielding and to compliment the gentleman from Massachusetts [Mr. FRANK] for creativity in this legislation this year. He has created some novel and complex defenses. He has also created a new tort damage of mental distress in here, but he has weaved it around so that it also is creative.

Under most laws of our States today, unless there is an association with actual physical injury, you cannot have a recovery for damages of mental distress, intentionally or otherwise inflicted. But in this legislation, I think it is one of the things that is really bad in this legislation, there is a new tort damage recovery for mental distress, and albeit creative, it does have some exceptions to it, but the bottomline points I want to make is despite the novelties in this legislation this time, in this amendment at this time, the same bottom line is there as before.

This is the creation of a new Federal cause of action of strict liability for anyone involved in the transportation or the storage of hazardous waste, and the persons that concern me the most are those who are involved in the transportation, the people who have got to get these things around who have relatively little contact except for that factor. They are so very strongly liable under this legislation and they are not going to get out from under it.

I do not know who is kidding whom about this, but nobody in his right mind in the business of transporting anything is going to want to transport hazardous waste if they can get the insurance at all, for the costs are going to be exhorbitant. The cost of this very type of thing we want to see here in getting hazardous waste disposed of is going to be so great that I doubt that it is going to happen.

We are talking about a staggering strict liability for the fellow who is the small entrepreneur who is out there trying to do the job of disposing of hazardous waste, not in the facility itself, not owning it, not having any responsibility for it, but simply transporting it, simply doing the job that the primary purpose of this statute really wants to encourage.

We are going to see a lot more civil litigation, we are going to see a lot less cleanup, and we are certainly going to see a lot more cost involved in this process if the Frank amendment is adopted, and I encourage my colleagues: Do not create a new Federal cause of action. Let the State laws apply.

Mr. FRANK. Mr. Chairman, I yield 4 minutes to the gentleman from New Jersey [Mr. FLORIO].

(Mr. FLORIO asked and was given permission to revise and extend his remarks.)

Mr. FLORIO. Mr. Chairman, I am pleased to rise in support of the concept in this amendment that the gentleman from Massachusetts [Mr. FRANK] is offering.

We have heard a lot about a lot of things today, but we have not heard anything about the injured people who, through no fault of their own, have come in direct proximity with hazardous waste sites, with dump sites, and have been injured.

The record of the various committees is full of testimony about individuals who have effectively been shut out of the opportunity to receive compensation for their injuries through the court system.

This, in a sense, is essentially a procedural amendment dealing with fairness through the court system. We are being asked to spend $10 billion to clean up toxic waste dump sites. We are not cleaning up those toxic waste dump sites because they are physically unattractive. We are cleaning them up because they constitute health hazards to people, imminent and substantial hazards to people's health and environment. That is the threshold test by which you can use any of the money to clean up these sites.

The 310(e) study that was commissioned under Superfund came to the conclusion that there is no question about the fact that the State toxic tort system is inequitable. It is does not provide fairness to people who are injured.

What we are being asked to do with the amendment of the gentleman from Massachusetts [Mr. FRANK], is to give to our citizens who have been injured the same rights as the EPA bureaucrat who is going to try to recoup the money for the fund that has been spent on cleaning up these sites. That bureaucrat has the capability of suing under strict, joint and several liability in order to recoup the money for the fund, which is commendable. But under current law we are saying that the citizen who lives next to the site, who has been damaged, injured, should not have those same procedural rights to go forward.

Representation has been made that the burden of proof somehow has been changed by the Frank amendment. The burden of proof has not been changed. Under the amendment, causal connection is required to be proved by a preponderance of the evidence. Under the amendment, proximate cause is required to be demonstrated. Actual damages have to be demonstrated and proved. There is an opportunity for an apportionment of damages if the defendant can show that he has contributed only a proportion of the damages to the individual.

What this amendment embodies is the principles of the common law that there are higher responsibilities on those who deal with materials that are by definition extremely hazardous.

I think it is important to note, and I do not know what the outcome of this amendment is going to be, but I think it is important to note that 10 years from now, if not sooner, this concept will be embodied in the law. We will endorse the concept that uniformity in these areas is desirable and required across the 50 States. The irony, of course, is that many in the business community argue before this body and the other body for the principle of uniformity in the product liability area. I am making the point that the business community in some areas sees the virtue of uniformity, sees the virtue of not having 50 different States with 50 different judicial systems, with idiosyncratic aspects that effectively preclude appropriate and fair recovery. But in this instance, they do not see that same desire for uniformity.

I am convinced that in the next number of years, if not in this year, we are going to realize that we cannot be having 50 different systems when we are dealing with products in interstate commerce. We should have the same arguments for uniformity with regard to product liability as well as for toxic torts.

Mr. FRANK is offering an important addition to the basic bill now before us—an amendment which will guarantee the right to those injured by toxic wastes to recover their damages under the same principles of liability that apply when the Federal Government sues a polluter for cleanup.

Many will remember that the original Superfund legislation in 1980 included relief for victims, but it was dropped in a last minute compromise. Instead, we commissioned a blue ribbon panel of legal experts to study this important problem. The panel, composed of representatives from the American Bar Association, the National Association of Attorney's General, the American Trial Lawyers Association and the American Law Institute, issued its report in June 1982. The report concluded that the current State tort law system—as of now the exclusive remedy of those injured by their exposure to hazardous substances—was totally inadequate to deal with the long latency diseases caused by exposure to toxic and hazardous wastes.

In response to the panel's concerns, Mr. FRANK has formulated a modest and limited remedy. Essentially, the Federal cause of action contained in the bill has:

First, it reforms various procedural rules such as statutes of limitation which cut off the right to sue years before such long latency diseases as cancer manifest themselves.

Second, the bill applies the same liability standards as apply under the current Superfund law to such toxic tort cases. This change puts individuals whose health has been irreparably damaged by hazardous substances on the same legal footing as the Government is when it sues polluters to clean up such sites.

In February of 1984 the Harvard School of Public Health issued a study documenting a tragedy in Woburn, MA. Harvard found that contaminated drinking wells in the area had caused an outbreak of fatal childhood leukemia and neverous disorders. The Harvard study is but the latest in a series of recent developments documenting the devasting impact of toxic substances in our environment on human health.

When the House considered Superfund legislation last year, we voted by a narrow margin to delete a Federal cause of action for toxic victims. Over the past year, Mr. FRANK and others have worked hard to address many of the concerns that were raised by Members over the scope of that original proposal. The amendment we have before us represents a thoughtful and moderate compromise of those concerns.

The right of all citizens to gain access and a fair deal from courts is fundamental to our entire American system of justice. We must protect this fundamental right of toxic tort victims. I urge my colleagues to support this amendment.

Mr. KINDNESS. Mr. Chairman, may I inquire as to the amount of time remaining for the three parties?

The CHAIRMAN pro tempore (Mr. Coleman of Texas). The gentleman from Massachusetts [Mr. Frank] has 5 minutes remaining; the gentleman from Ohio [Mr. Kindness] has 6 minutes remaining; and the gentleman from Kansas [Mr. Glickman] has 3½ minutes remaining.

Mr. KINDNESS. Mr. Chairman, I yield 2 minutes to the gentleman from Nebraska [Mr. Daub].

Mr. DAUB. Mr. Chairman, a year ago, if my colleagues will remember, we had an exciting debate on this issue under the 5-minute rule, one of the most stimulating debates I think I have experienced in my time in Congress.

The amendment, although improved, I must say to the gentleman from Massachusetts, still, in my opinion, means that anyone alleging an injury from exposure to hazardous substances would be able to recover damages under a legal standard that would render defendants virtually defenseless.

The issue really is insurability. Currently enormous costs of insurance are at crisis proportions. This amendment will exacerbate the problem and will ensure, in my opinion, perhaps permanently, the unavailability of insurance for the hazardous waste industry.

The private sector will not be able to provide the services and facilities for the safe and orderly handling of hazardous waste. Rather than face wide open liability under Frank, without insurance, generators will either quit the business or dump the waste in unsafe and untraceable places.

The amendment jettisons the traditional tort notions of fault and causation.

Liability for personal injury would be triggered by merely depositing or storing a hazardous substance even if the party did nothing to contribute to the activity which approximately causes the harm. Thus, the mere presence of material which is released by the negligent or perhaps even malicious conduct of another will relieve a defendant depositor of liability for personal injury.

Strict liability, where negligence is not at issue, would be mandatory even though courts have said that strict liability is not always rigidly available under other Superfund provisions.

Defenses are limited to those specifically stated in the statute. Thus, such fault based defenses like contributory or comparative negligence wouldn't be allowed even though common law remedies today may allow them. Smoking or drinking which may be an important factor in a plaintiff's injury cannot be considered in damage awards.

We are not talking about choosing between no legal remedy or a Federal cause of action for injured parties. We are talking about a choice between existing common law and State statutory remedies which govern most areas of personal injuries today or a system which can be fairly described as the Insurance Coverage Devastation and Lawyers Employment Amendment of 1985". Let's defeat the amendment. It is not going to solve our problems.

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Mr. GLICKMAN. Mr. Chairman, I yield 1 minute to the gentleman from Georgia [Mr. Rowland].

Mr. ROWLAND of Georgia. Mr. Chairman, I rise in opposition to the amendment.

We are talking about a Federal cause of action, which may remove some of the barriers for plaintiffs exposed to hazardous waste from seeking judicial remedy. While I commend the gentleman for his effort, and I indeed agree that something in this area should be done, I am not convinced we have taken all of the steps available prior to a Federal cause of action being instituted. It appears that we, more and more, are becoming a litiginous society, unable to solve any differences or problems outside of filing suit.

There are in my opinion, many reasons this amendment should be defeated. But I want to focus on one area. While we may know the etiology of cancers from toxic substances in some instances, such as mesothelioma, which is related to asbestos. There are many occasions when we do not know the relationship. It seems to me that this amendment presumes a great deal.

More information is necessary and we have the vehicle in the Superfund amendments. Under section 116, the health assessment study would be a compilation of complete data on: First, the nature and extent of the contamination, second, the existence of potential pathways of human exposure, third, the size and potential susceptibility of communities around the facility, fourth, comparisons of human exposure levels, and fifth, comparisions of existing mortality and morbidity data. This provision will provide documented evidence to assist us in determining the appropriate avenues of redress for victims seeking compensation from toxic exposure.

Therefore, I urge the defeat of this amendment and ask that we allow the States to deal with this problem now, giving us time to accumulate more information about the true relationship between toxic substances and disease. Before going forward with a Federal cause of action.

Mr. KINDNESS. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio [Mr. OXLEY].

(Mr. OXLEY asked and was given permission to revise and extend his remarks.)

Mr. OXLEY. Mr. Chairman, the Frank amendment is certainly a radical change in what we view as Federal law today; particularly in the tort area. It does not belong in a cleanup bill as has been pointed out before.

I want to specifically talk about section 14, which I find to be the most interesting part of the Frank amendment. That is the section that exempts the Federal Government, the State governments and all local government from any liability, which to me seems to be rather an extraordinary approach, and quite unfair.

What it means, of course, is that private citizens would be made to compensate individuals for damages to which a government entity or entities clearly and obviously contributed.

We talked earlier on this bill about the case where you have repositories for waste that have been for the most part used by government entities. As I read the Frank amendment, they would be, the government entities themselves; whether they were the total participants or partial participants would be totally exempt under the auspices of the Frank amendment. I find that clearly unfair and very difficult to believe.

I am not sure that we want to set up a double standard under the Frank amendment that would totally exempt governments while at the same time those private individuals, whether they be the ones who are transporting the items or whether they be dealing with the cleanups, find themselves vulnerable to Federal lawsuits under the Frank amendment.

I yield to my friend from New York.

Mr. LENT. I thank the gentleman for yielding.

Mr. Chairman, I want to identify with the statement that the gentleman has made. I ask the gentleman, what about the intended purpose of Superfund; namely, inducing people, responsible parties, to come forward and voluntarily, using their own money, clean up the hazardous waste dumps?

I would like to ask the gentleman, what is his opinion of, what private parties are ever going to come forward now, assuming the Frank amendment were to be adopted and volunteer to clean up their waste dumps. What would the chances be?

Mr. OXLEY. The chances would be very slim, and of course if I were advising those parties, I would advise them not to participate.

Mr. KINDNESS. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, in the interests of bringing the debate on this amendment to a conclusion, I think we are all trying to condense our time here; but I would just like to point out, the Superfund legislation that is before us is intended to protect the public interest, to clean up hazardous waste sites in order to protect the public interest.

The Frank amendment goes at odds with that; it has to do with adjustment of private rights and liabilities and remedies. Let us not use up all of the assets of those responsible parties by responding to such private lawsuits when indeed it is the public interest we are here to protect.

There are a lot of things that can be said about the Frank amendment by way of opposition to it, but I think the most devastating is that it was not offered at the subcommittee; it was not offered at the full committee; it is offered in a setting here in which it is ill-considered and many of us who have the opportunity to take a look at it are thoroughly convinced that if you had time to debate it fully, it would certainly be defeated, and I ask for its defeat.

Mr. GLICKMAN. Mr. Chairman, I yield myself 1 minute and 30 seconds.

To close, Mr. Chairman, I would like to say the following things. This amendment overrides normal evidentiary rules of the States and it overrides substantive standards of the States, so this is not just a procedural amendment; we are overriding substantive laws in the various States.

Now, in addition to that, I want to bring my colleagues' attention to section 611, which provides something called additional recovery. When you read it, it allows the opportunity for a person to be sued twice for the same incidence; maybe three times, maybe four times; and to have dual, triple, and possibly quadruple recovery under certain circumstances.

This amendment allows punitive damages. That was not in the amendment allowed last year.

The most important point that I want to talk about has to do with joint and several liability. Yes, it is important that we have joint and several liability for cleanup purposes. But that is not consistent with this Nation's historical jurisprudence with respect to personal injury.

We have always believed, under tort law in this country, that personal injury or property damage which is required to be judged with respect to an individual liability should and can be linked to individual chemicals and thus individual responsibility.

We believe in joint and several when it comes to cleanup, because that is the only way you are going to get the sites cleaned up, but to have joint and several liability with respect to private damage actions will create enormous potential liability for individuals, which will have nothing to do with cleanup. I urge defeat of the Frank amendment.

Mr. FRANK. Mr. Chairman, I yield 30 seconds to the gentleman from New York [Mr. LENT].

(Mr. LENT asked and was given permission to revise and extend his remarks.)

Mr. LENT. Mr. Chairman, this amendment is extremely mischievous to the purpose of Superfund—it distorts Superfund—and it will have the effect of destroying Superfund.

Let me tell you why.

Superfund is a cleanup statute. It is a program to clean up privately created toxic waste dumps—tens of thousands of them. To do this, because the public problem is so great, we not only set up special taxes to pay for the cleanup, we also revamped, in this limited situation, the entire law of torts. We impose strict, joint and several, retroactive liability on all parties—on whoever put a shovelful of debris into a waste pit. All of the usual concepts of the common law—legal responsibility; of fault; of negligence; of the reasonable man; of contributory negligence; of comparative negligence; of the rules of evidence; that the dump had a State or local license; that the dumper was directed to the dump by Government authority; that the responsible party was completely ignorant that the transporter misdirected the materials to the dump—concepts of real damages, as opposed to the fear of injury—all of the traditional tort defenses and concepts are summarily wiped out in this special situation, for the higher goal of cleaning up toxic waste dumps. And this Superfund, unlike its embarrassingly unsuccessful predecessor, is crafted in such a way as to encourage responsible parties to come forward and clean up, at their own expense. There are breakthrough settlement provisions in this legislation. There are settlement windows to induce voluntary cleanup. There are special rules for third-party actions and special rules for contribution from others. We think the Commerce Committee and the Public Works Committee have produced a workable program, using these extraordinary new legal concepts, to help get the job done.

Now, along comes the Frank amendment and says, in effect, hey, wow, look at these great new tort laws we have created here in Superfund.

Let's make them available to all people with cancer, lymphoma, lung problems, birth defects, and skin rashes of any kind.

They will have to sue in Federal court, of course, because State courts have these old, burdensome, common law concepts of fault and negligence and contributory negligence and causation and proof of damages.

And they can sue anybody—whoever put a spadeful of toxics into any dump, these poor unfortunate folks, who ever lived near or drove by or flew over a dump on the Superfund list.

And it doesn't matter when the stuff was dumped in, or when or how the injury or sickness was inflicted. There is joint and several liability—it is retroactive—you can put into evidence all kinds of studies done by college students or professors—without cross examination—without the need to prove causation—and the sky's the limit for the measure of damages. And you can collect for fear of injury to yourself—or someone else in your family regardless of actual injury.

Now this is a great deal for lawyers. It's bonanza for lawyers. It's a full employment act for lawyers.

But what about the intended purpose of Superfund—the cleanup of tens of thousands of dumps. I ask you: What private party is ever going to come forward now—with this Federal cause of action—and admit to responsibility and put up its own money to clean up, using the breakthrough settlement provisions we have crafted into this legislation, when the minute they do, they expose themselves to such unlimited, joint and several liability, under Superfund standards.

The answer, my friends, is no one will ever come forward, voluntarily, under Frank. If you liked the old Superfund law, if you think cleaning up only five dumps in 5 years is a great record, then you will love the Frank amendment because if it is adopted, we will continue to focus our resources in the court rooms of America, rather than the dump sites of America.

Mr. FRANK. Mr. Chairman, I yield myself 1 minute and 30 seconds.

Mr. Chairman, I thank the gentleman from Nebraska [Mr. Daub], who acknowledged that this amendment deals with many of the objections people had before.

People opposing this amendment are not arguing that people should not go to court, because I want to remind Members that they very proudly, justifiably proudly pointed to a section in this bill which enhances people's right to go into State courts; in some cases guaranteeing them what might be a retroactive shot in State court by a Federal change of the State standards.

So we agree that you ought to be able to go to court. The question is, should you be able to go into Federal court.

Joint and several liability, as I have pointed out before, is substantially modified in this bill. The specific objections people had to a Federal cause of action which were brought out in our last debate have been dealt with substantially.

We now have the fundamental question: If you are substantially harmed—we have punitive damages only if there is blatant and conscious indifference; it is a very tough standard to get punitive damages. If you are actually harmed; you have to be under this bill, can you go into Federal court, and with the Federal rules of evidence applying and with the preponderance of evidence being your burden, can you show that this type of substance was released from this place; it causes these damages; if people were diminimus, they are released. If there is a problem of contribution, the courts can drop it.

So the question is very straightforward; should someone who is unarguably injured by the release of hazardous wastes have any remedy in Federal court? That is the question on this amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. KINDNESS. Mr. Chairman, I yield back the balance of my time.

Mr. GLICKMAN. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. Torres].

(Mr. TORRES asked and was given permission to revise and extend his remarks.)

Mr. TORRES. Mr. Chairman, I rise in support of H.R. 3852. I have waited many months for this bill to come to the floor.

I have four Superfund sites in my district. Remedial action at those sites has been delayed because the authorization for the Superfund law expired. Those delays threaten the health of my constituents.

My district needs a strong Superfund law. My constituents do not just want the EPA to go into areas and clean up landfills. They want more. They want to make sure that when one site is cleaned up that the toxic waste is not sent over to a neighboring landfill where it can leak there.

My constituents are familiar with the toxic waste shell game. You may have heard of the Stringfellow acid pits. That Superfund site is one of the most notorious of all the sites on the national priority list. Water is contaminated, soil is contaminated and the health of everyone living near the site is threatened. Remember Rita Lavelle? She didn't even want to clean up that site.

Now, Rita Lavelle is gone and the cleanup at Stringfellow is starting slowly. And yet, when the waste from Stringfellow was first removed, it was dumped at another landfill about an hour away located in my district. The landfill in my district was chosen because it was the closest hazardous waste landfill to Stringfellow. Any safer treatment and disposal facilities do not even exist in southern California.

Last year, the landfill in my district started to leak. It started to leak the same waste that had come from the Stringfellow site. My constituents were evacuated. EPA issued abatement orders. And the landfill was closed to hazardous waste dumping.

To my constituents, the shell game became a reality. Waste was transferred from one leaking landfill to another leaking landfill. The problem continues. Today, the waste from Stringfellow is now being sent to another landfill further north of my district. And, guess what? That landfill also has begun to leak.

We must stop the shell game. This Superfund legislation would do just that. This legislation says that if a State cannot show that it has the capacity to treat and dispose of hazardous waste in a safe manner, then, it should not be getting Superfund moneys. Doesn't that make sense? Why should we spend money to clean up sites, if the waste we are cleaning up is just sent somewhere else to leak and poison the environment? We must guarantee that if we clean up a site, we clean the site permanently and not just spread it around.

This version of Superfund will make sure that the shell game really ends. I can support this version of Superfund.

Mr. GLICKMAN. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. All time has expired.

The question is on the amendment offered by the gentleman from Massachusetts [Mr. FRANK], as amended.

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. FRANK. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 162, noes 261, not voting 11, as follows:

[Roll No. 448]

AYES—162

Ackerman
Ford (MI)
Morrison (CT)

Addabbo
Akaka
Alexander
Anderson
Annunzio
Aspin
Atkins
AuCoin
Barnes
Bates
Bedell
Beilenson
Bennett
Berman
Biaggi
Boehlert
Boggs
Boland
Boner (TN)
Bonior (MI)
Bonker
Boucher
Boxer
Brown (CA)
Bruce
Bryant
Burton (CA)
Clay
Coleman (TX)
Collins
Conte
Conyers
Cooper
Coughlin
Courter
Coyne
Crockett
Dellums
DioGuardi
Dixon
Donnelly
Downey
Durbin
Dwyer
Early
Edgar
Edwards (CA)
Evans (IA)
Evans (IL)
Fascell
Feighan
Florio
Foglietta

Ford (TN)
Frank
Frost
Gallo
Garcia
Gejdenson
Gephardt
Gibbons
Gilman
Gonzalez
Gray (PA)
Green
Hall (OH)
Hawkins
Hayes
Hertel
Horton
Howard
Jacobs
Jeffords
Kaptur
Kastenmeier
Kennelly
Kildee
Kleczka
Kostmayer
LaFalce
Lantos
Leach (IA)
Lehman (CA)
Lehman (FL)
Leland
Levine (CA)
Lipinski
Long
Lowry (WA)
Lundine
MacKay
Markey
Martinez
Matsui
Mavroules
McCloskey
McDade
McHugh
McKernan
Mikulski
Miller (CA)
Mineta
Mitchell
Moakley
Molinari
Moody

Natcher
Nowak
Oakar
Oberstar
Obey
Ortiz
Owens
Penny
Pepper
Petri
Pickle
Rahall
Rangel
Reid
Rinaldo
Robinson
Rodino
Roe
Roemer
Roybal
Sabo
Savage
Scheuer
Schneider
Schroeder
Schumer
Seiberling
Sharp
Sikorski
Smith (FL)
Smith (IA)
Smith (NJ)
Snowe
Solarz
St Germain
Staggers
Stark
Stokes
Studds
Synar
Torres
Torricelli
Traficant
Udall
Vento
Waxman
Weaver
Weiss
Wheat
Williams
Wolpe
Wyden
Yates

NOES—261

Andrews
Anthony
Applegate
Archer
Armey
Badham
Barnard
Bartlett
Barton
Bateman
Bentley

Bereuter
Bevill
Bilirakis
Bliley
Borski
Bosco
Boulter
Breaux
Broomfield
Brown (CO)
Broyhill

Burton (IN)
Bustamante
Byron
Callahan
Campbell
Carney
Carper
Carr
Chandler
Chapman
Chappell

Cheney
Clinger
Coats
Cobey
Coble
Coelho
Coleman (MO)
Combest
Craig
Crane
Daniel
Dannemeyer
Darden
Daschle
Daub
Davis

Hutto
Ireland
Jenkins
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kanjorski
Kasich
Kemp
Kindness
Kolbe
Kolter
Kramer
Lagomarsino
Latta

Ritter
Roberts
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Rudd
Russo
Saxton
Schaefer
Schuette
Schulze
Sensenbrenner

de la Garza
DeLay
Derrick
DeWine
Dickinson
Dicks
Dingell
Dorgan (ND)
Dornan (CA)
Dowdy
Dreier
Duncan
Dymally
Dyson
Eckart (OH)
Eckert (NY)
Edwards (OK)
Emerson
English
Erdreich
Fawell
Fazio
Fiedler
Fields
Fish
Flippo
Foley
Fowler
Franklin
Frenzel
Fuqua
Gaydos
Gekas
Gingrich
Glickman
Goodling
Gordon
Gradison
Gray (IL)
Gregg
Grotberg
Guarini
Gunderson
Hall, Ralph
Hammerschmidt
Hansen
Hartnett
Hatcher
Hefner
Heftel
Hendon
Henry
Hiler
Hillis
Holt
Hopkins
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Leath (TX)
Lent
Levin (MI)
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lloyd
Loeffler
Lott
Lowery (CA)
Lujan
Luken
Lungren
Mack
Madigan
Manton
Marlenee
Martin (IL)
Martin (NY)
Mazzoli
McCain
McCandless
McCollum
McCurdy
McEwen
McGrath
McMillan
Meyers
Mica
Michel
Miller (WA)
Mollohan
Monson
Montgomery
Moore
Moorhead
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Neal
Nichols
Nielson
O'Brien
Olin
Oxley
Packard
Panetta
Parris
Pashayan
Pease
Perkins
Porter
Pursell
Quillen
Ray
Regula
Richardson
Ridge
Shaw
Shelby
Shumway
Shuster
Siljander
Sisisky
Skeen
Skelton
Slattery
Slaughter
Smith (NE)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snyder
Solomon
Spence
Spratt
Stallings
Stangeland
Stenholm
Strang
Stratton
Stump
Sundquist
Sweeney
Swift
Swindall
Tallon
Tauke
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Towns
Traxler
Valentine
Vander Jagt
Visclosky
Volkmer
Vucanovich
Walker
Watkins
Whitehurst
Whitley
Whittaker
Wilson
Wirth
Wise
Wolf
Wortley
Wright
Wylie
Yatron
Young (AK)
Young (FL)
Young (MO)
Zschau

NOT VOTING—11

Brooks
Chappie
Hamilton
Hyde
McKinney
Miller (OH)
Nelson
Price
Walgren
Weber
Whitten

□ 1825

Messrs. ORTIZ, BRYANT, SMITH of Florida, and CROCKETT changed their votes from "no" to "aye."

Mr. HOWARD changed his vote from "present" to "aye."

So the amendment, as amended, was rejected.

The result of the vote was announced as above recorded.

Mr. JEFFORDS. Mr. Chairman, I rise in support of H.R. 2817, legislation to amend and reauthorize the Superfund Program. I would also like to take this time to commend the members of the Public Works and Energy and Commerce Committees for their diligence in reaching a compromise on this important legislation.

There is no question that this is an issue of tremendous concern to the Congress and to the American public. Five years ago we entered new territory with the enactment of the Superfund law. The primary goal of this legislation was to create a mechanism by which those parties responsible for polluting the environment with hazardous wastes are ultimately responsible for cleaning them up. Yet the bill also recognized that in many cases immediate, Government-financed responses would be necessary because of the difficulty in identifying those responsible and potential legal delays in cleanups.

In the ensuing 5 years we have seen the progrm confronted by a number of obstacles—some technological, some institutional, some political, some legal. Those who would blame the EPA for the inability of Superfund to clean up a significant number of sites ignore many of the fundamental obstacles to an effective national hazardous waste cleanup effort.

Our job now is to improve the Superfund program in a manner which will, to the extent possible, remove these obstacles and allow EPA to get the job done. I believe that H.R. 2817, as amended, will do just that.

The bill contains mandatory, enforceable, and I believe reasonable schedules for cleanups of sites on the National Priorities List. It calls upon EPA to complete remedial action on all 541 sites currently on the NPL within 5 years, or else explain why this outcome cannot be achieved. This section also requires EPA to add 1,600 new sites to the NPL by 1988, and begin at least 525 new remedial investigation and feasibility studies within 3 years.

The bill will also establish tough standards which will insure that Superfund sites are really cleaned up. Cleanups must conform to existing standards under Federal environmental laws or water quality standards which are applicable or relevant and appropriate under the circumstances. Language in this bill instructs the EPA to use permanent cleanup technology whenever possible, and provides for interim reviews of the applicability of emerging technologies for those sites which have not been permanently cleaned up. It also specifies that in States with standards tougher tha these under Federal law, those State standards would apply.

H.R. 2817 contains provisions which allow affected parties to sue private parties to force cleanup of hazardous waste facilities when these sites pose an imminent and substantial threat to public health or the environment. While I would like to insure to the great extent possible that society's resources are spent on cleanups rather than on litigation, past experience dictates that these citizen suit provisions are necessary to force cleanups.

The bill contains community right-to-know provisions which create notification requirements for those handling hazardous chemicals. Facilities which handle these chemicals, which are so acutely toxic that release in any amount endangers human health, are required to keep an inventory of these substances and notify State and local officials of any release of these substances into the environment. State and local organizations are responsible for coordination and emergency planning within their local communities.

An important new program created in this bill addresses the problem of leaking underground storage tanks. A tax on gasoline will provide $850 million to clean up these leaking tanks, which pose a serious threat to our Nation's ground water supply. Under the bill's provisions, EPA (or the State) is authorized to undertake these cleanups or require responsible parties to do so. The intent is identical to other Superfund provisions: to make those responsible parties pay for cleanups, yet in cases where delays are imminent, provide the funds to do the job now and recover from those responsible later.

It is very important that the funding mechanism for Superfund reinforce the goals of the program. Those companies which generate large volumes of hazardous waste should be the ones financing Superfund cleanups. The Superfund excise tax proposed by the Ways and Means Committee violates this polluter pays principle. It would have taxed those firms which produce no waste on an equal basis with those who generate large volumes.

I would like to see a tax scheme which is based upon the volume of waste generated. Such a system would encourage waste reduction technologies. The market price of a product would reflect all of the costs of production, including the costs of waste disposal.

Of the funding proposals before the House, the Downey substitute best meets this polluter pays principle. It contains a waste end tax to generate $2 billion, along with chemical and petroleum taxes totalling $5.1 billion. I commend my colleagues for adopting this Superfund revenue mechanism.

Mr. Chairman, I do not agree with every provision contained in this bill. But I think this is a very strong bill, and the members of those committees which worked hard to craft this bill should be commended.

This bill strengthens our commitment to protecting future generations from the mistakes of the past. This improved Superfund Program will make real progress over the next 5 years. We are providing EPA with the mandate and the funds to get the job done. I urge my colleagues to support this bill.

Mr. LIGHTFOOT. Mr. Chairman, the need to reauthorize Superfund for another 5 years is urgent. The Nation's most threatening environmental problem is that of dangerous abandoned toxic waste sites. These abandoned toxic wastes are like a disease, lying in the Earth, gradually spreading throughout the aquifers, our water supplies. They threaten our health, the health of our children, and, unless we act to clean them up, the health of generations to come. The Superfund reauthorization bill before us today would provide strong protection for the public health and environment, and I strongly support it insofar as it addresses our needs in this area.

I would also like to point out that possible inequities to the American farmer have been corrected in this bill. The original version of H.R. 2817 would have brought farmers within the scope of Superfund for the first time, potentially subjecting them to litigation as a result of the normal use of fertilizers and pesticides. However, the public works committee recognized that farmers are not the polluters that Superfund is intended to address, and therefore changes were made in the bill to correct this problem.

However, Mr. Chairman, I believe there may still be a problem about this bill which has not been addressed, and that is the $10 billion level of funding. I am shocked at how little debate on this bill has been addressed to its cost to the American taxpayer. Over the past 5 years we spent $1.2 billion on Superfund. This relatively low funding level combined with some mismanagement resulted in very few cleanups being completed. However, to address this problem the Environmental Protection Agency requested $5.3 billion for the next 5 years—a 425-percent increase over the first 5-year authorization. EPA says anything over that amount could not possibly be spent effectively. The other body earlier this year went beyond that request and approved a funding level of $7.5 billion. And now, the bill we have before us would provide $10 billion to be spent over 5 years, which is nearly double the amount requested and $2.5 billion more than what was approved by the other body.

If $10 billion can be spent effectively to clean up toxic waste faster than a lower level of funding, then I would support this level. But our ability to use these additional funds effectively has not been demonstrated. The people who will be doing the job say the extra funds cannot be spent effectively, and I for one don't believe I'm in a position to question that.

The series of events that has led to such a high funding level in this bill reminds me of the technique a horse salesman will use to get a higher price than he knows he deserves. Instead of asking for what he knows the horse is worth, he doubles the amount and then settles somewhere in between. The difference in this case is that there was no settling—the horse salesman is getting double what he asked for even though he knows it's much more than the horse is worth. And once again, the deeply indebted American taxpayer is left to foot the bill.

I would remind my colleagues of all our earlier efforts to cut the Federal deficit this year. We've forced so many of our constituents to tighten their belts by making unprecedented freezes and cuts in Federal programs. Now we have a chance to cut $5 billion that an agency says it doesn't even need, but for some reason no one seems willing to do it. This seems to be a classic example of a well-intended attempt to solve an urgent problem simply by throwing more money at it. I realize that no one wants to be perceived as being against Superfund and the cleanup of toxic wastes, but let's keep in mind that wasteful spending in the Superfund program is just as wrong as wasteful spending in the Department of Defense or any other program.

Again, Mr. Chairman, because of the urgent nature of the toxic waste program in the United States, I intend to support H.R. 2817 today. But I still believe we can address the urgent need to clean up toxic waste with a more manageable level of funding, and I look forward to the opportunity to support a more reasonable level should a conference with the other body produce such a compromise.

Mr. LEVIN of Michigan. Mr. Chairman, there is no environmental issue more threatening to the American people than the problem of toxic waste. Each year in this country, over 60 million tons of toxic waste material are generated. Additionally, decades of unregulated dumping of hazardous waste into literally thousands of now abandoned landfills have left a legacy of leaking toxic poisons, which threaten the lives, health and welfare of citizens of every State.

I am pleased to support H.R. 2817, the Superfund reauthorization bill, and urge its passage. When Congress enacted the original Suberfund Program in 1980, I believe it had taken a significant step toward reducing the risk posed by abandoned hazardous waste sites. Five years and $1,6 billion later, we find that of the 850 most toxic waste sites listed on the National Priority List, EPA has only managed to clean up six of them. Of these six, two sites were really insignificant waste problems, and should never have been on the National Priority List to begin with. Yet another of the supposedly cleaned sites burst open following the heavy rains from Hurricane Gloria earlier this year. As a result, 100,000 gallons of oily toxics spilled into the Susquehanna River. So it seems EPA only managed to clean up three sites in 5 years.

This deplorable record does not come as a complete surprise. EPA's response to the task of cleaning up this Nation's abandoned toxic waste sites has been inept. Allegations of mismanagement, sweetheart deals that let polluters off the hook, and political manipulation of the Superfund led to the resignation of more than 20 top EPA officials, including EPA's director, Anne Burford, in 1983.

It is clear that EPA cannot be left to its own devices in the cleanup of this Nation's toxic waste sites. I am therefore pleased to support a Superfund program which imposes mandatory cleanup schedules for EPA to begin actual cleanup at a minimum of 600 hazardous waste sites in the next 5 years. The bill also mandates, for the first time, that cleanup at Superfund sites meet statutory standards.

Finally, this $10 billion reauthorization gives strong incentives to producers of toxic waste to recycle waste or dispose of it permanently, rather than simply bury it in landfills, which may themselves become Superfund sites in time. I support the waste-end tax which will help place the burden of Superfund cleanup on the polluters.

The Office of Technology Assessment estimates that there may be as many as 10,000 dangerous toxic waste sites which will someday require cleanup. Mr. Chairman, it is past time that this country start making headway against this backlog. I urge passage of the Superfund reauthorization.

Mrs. LLOYD. Mr. Chairman, I rise to offer my support for this necessary legislation, H.R. 2817, the superfund amendments of 1985 and I want to commend my colleagues on the energy and commerce and public works committees for their diligence in reaching this compromise position on how waste cleanup should proceed.

While I do support the entire legislative package, with the expectation that certain unfortunate amendments leading to unnecessary costs will be rejected, I want to comment on two provisions of particular interest to me. I am very pleased that the bill includes a section on research, development and demonstration which is chiefly modeled on H.R. 3065 which was reported by the Science and Technology Committee on September 4. These provisions authorize a coordinated Federal effort to promote the development of alternative and innovative treatment technologies for use in cleaning up toxic waste sites. These same provisions authorize a human health research effort under the auspices of EPA and the Department of Health and Human Services and provides grants to universities to conduct some of this important research work.

I believe that the research and development portion of this legislation is an important one although there has been little real discussion of this aspect of waste cleanup in the media coverage. We cannot understate the importance of moving ahead with the cleanup of these already toxic sites, but our efforts now in developing alternative and innovative technologies will have vast implications for our future cleanup efforts. The fact is that it is not at all clear what is required to achieve compliance in the remedial action on these sites. The waste sites must be characterized and thoroughly assessed before cleanup plans can be developed. It is clear that the scope of such plans and the costs of cleanup will depend greatly on the cleanup technologies available.

From my position on the Science and Technology Committee, I have watched with great concern as various segments of society persist in the belief that zero risk can be achieved. Issues ranging from the release of genetically-engineered organisms to the selection of an acid rain abatement strategy require some form of risk assessment to provide a more rational basis for public decisionmaking. The R&D elements of this bill will help EPA and other agencies address the degree of risk more reasonably and remind us that our technological health depends increasingly on the skill with which we are able to address and resolve such issues recognizing that there are no zero risk alternatives.

I am very familiar with the type of waste problems we face at Federal facilities. The Y-12 weapons facility at Oak Ridge, TN, in my district, had serious environmental problems with mercury and other pollutants. It has required a significant monitoring effort and careful analyses to assess the extent of the cleanup problems and provide a technical basis for cleanup plans. The research, development and demonstration projects authorized in this bill are critical to providing both Federal agencies and industry with the confidence that adequate technology will be available for the entire spectrum of cleanup activities.

My second comment concerns the specifics of dealing with Federal waste sites. I can understand each States concerns in dealing with expensive and necessary cleanup of existing toxic waste sites and I certainly believe that the States should have a reasonable involvement in cleanup decisions. However, I hope my colleagues will see the wisdom of ensuring that cleanup efforts of already-contaminated sites at our Federal installations are handled in the most effective manner with regard to the States rights under the accepted guidelines. In other words, we need to ensure that Federal facilities/agencies will have the final word in cleanup actions and not be subjected to unnecessary cleanup expenses imposed by the States if the State cannot identify alternative disposal sites.

Thank you, Mr. Chairman. I urge my colleagues' support of this legislation.

Mr. DREIER of California. Mr. Chairman, the Superfund legislation we have been considering these past few legislative days is one of the most important environmental laws with which Congress has ever dealt with. It comes at a time when the extent of toxic waste contamination in this country is so overwhelming that potential environmental damage may be irreversible. Clearly, the Nation's abandoned hazardous waste dump sites pose a dangerous threat to our public health and the environment, and I support a strong and effective Superfund Program which will address this national crisis.

Traditionally, I have always been a proponent of greater enforcement responsibility and cost sharing at the State level. However, the generation, transportation, and disposal of toxic waste is very much an interstate issue. For example, one toxic waste landfill located near my California district had been receiving hazardous waste from as far away as Virginia. The dump has since stopped accepting hazardous waste as a result of leaking contaminants into a nearby residential community. This situation demonstrates the need for strong Federal intervention.

I believe H.R. 2817 is a good foundation in which to build a Superfund Program committed to locating and cleaning up permanently our Nation's most dangerous hazardous waste sites. As we know, there are close to 10,000 Superfund sites which have already been identified, and potentially thousands more will probably be discovered sometime in the near future. There isn't one region of the country that is immune from the threat of toxic contamination.

Southern California, where leaking dump sites are contaminating a considerable number of ground water wells, is a tragic example. In fact, in the San Gabriel Valley alone, almost one-third of the water wells are so contaminated that they have either been shut down, or the water has been treated to meet the State's health requirements. In this regard, I view the Superfund Program as more than just a hazardous waste cleanup program. It is the centerpiece of a national commitment to reverse the considerable damage caused by illegal dumping and the mismanagement of hazardous waste storage facilities.

My main concern, Mr. Chairman, is that the resources needed to address all of the potential health threats created by leaking hazardous waste dump sites go well beyond what is currently at our disposal. For this reason, I believe it is essential that we not deter our limited resources or undermine the primary purpose of the Superfund Program: to promptly clean up our Nation's most dangerous abandoned hazardous waste dump sites.

More important, we must do more than just react to the threat of toxic contamination. We need to put considerably more emphasis on efforts to prevent future Superfund sites. This, I believe, entails a vigorous program of technological development to improve current cleanup methods, as well as the development of innovative ideas to control, reduce, or even eliminate altogether future sources of contamination. Today, unfortunately, there is a definite lack of available, affordable, and environmentally sound waste management facilities.

In the first 5 years of the Superfund Program, the EPA devoted not more than $25 million on cleanup technology research and development. H.R. 2817 makes drastic improvements in that area, and this I find very encouraging. I hope, however, that we can continue to promote technology research and development beyond the scope of Superfund. One of the greatest sources of technological innovation can be found in the small business sector. I believe we should successfully utilize the vast potential of small entrepreneurs by providing them with favorable incentives to develop alternative waste management techniques.

Mr. Chairman, a strong and effective Superfund Program is a national priority and a vital element of our efforts to protect public health and safety and to clean up the environment. I hope Congress and the President will move expeditiously in approving the Superfund legislation so we can rapidly attend to our Superfund agenda; to clean up permanently the Nation's worst abandoned hazardous waste sites. More important, Mr. Chairman, I hope we can work beyond Superfund to promote the development and implementation of advanced technology necessary to prevent future Superfund sites.

Mr. CHANDLER. Mr. Chairman, section 126 of the legislation we are currently considering would, simply put, require the Occupational Safety and Health Administration [OSHA] to promulgate regulations to protect workers employed to clean up toxic waste sites. Such a provision has great merit; however, section 126, as written is problematic in several areas:

First, the provision applies to State and local workers. When Congress enacted the Occupational Safety and Health Act, it intentionally excluded from coverage State and local governments. A Superfund bill is not the appropriate place to expand coverage of the Occupational Safety and Health Act.

Second, section 126 also sets forth with specificity what provisions must be included in the standard promulgated by OSHA. This is in direct contradiction to the Occupational Safety and Health Act, which requires the Secretary of Labor to develop standards, and I quote, "which most adequately assure * * * that no employee will suffer health impairment," end of quote, based upon the best available evidence. Section 6 of the Occupational Safety and Health Act further requires that development of standards under the above-mentioned section be based upon research, demonstrations, latest available scientific evidence, public comment and other appropriate information. Now along comes this Superfund bill which effectively tells the Secretary of Labor that with regard to toxic waste sites, Congress is the expert on what is necessary to protect workers, not OSHA.

Let me repeat, a Superfund bill is not the appropriate place to amend OSHA. If my colleagues believe that OSHA is not doing or cannot do its job, the rules of this House require that it be dealt with by the Education and Labor Committee, which has sole jurisdiction over the Occupational Safety and Health Act.

I will honor the agreement to limit amendments by not offering an amendment to section 126 but would urge my colleagues who may be chosen to serve as conferees on this issue to look to the Senate language dealing with worker protections.

Mr. KOSTMAYER. Mr. Chairman, today I rise in support of the Superfund tax as approved by the House Ways and Means Committee.

As we attempt to finance an expanded Superfund Program, we want to ensure that these revenues are raised in a manner that poses the least economic harm, while spreading the burden for cleanup as equitably as possible. The Ways and Means Superfund tax accomplishes these goals. The substitutes that will be offered on the House floor fail the test.

The Ways and Means legislation will provide $10 billion for cleanup over 5 years through a combination of a tax on crude oil, chemical feedstock taxes at current levels, a waste generation tax, a small amount of general revenues, and a broad-based Superfund excise tax [SET].

I support this approach for the following reasons:

First, the Superfund excise tax is fair and would be paid by a broad category of manufacturers, in recognition of the fact that essentially all types of manufacturers have been identified as being responsible for the hazardous wastes found in Superfund sites. As a means of removing any doubts about the question of responsibility, the SET provides exemptions for food products, unprocessed agricultural and fishery products, timber, and fertilizer. A small business exemption from the tax is also provided.

Second, the SET is trade neutral. The tax is imposed on imports, while domestic manufacturers would get a rebate on their exports. The two substitutes that will be offered on the floor do not protect domestic producers from unfair foreign competition. As a matter of fact, the Downey-Frenzel substitute, with its increases in taxes on chemical feedstocks and crude oil, would give an advantage to foreign competitors.

Third, the SET is levied at an extremely low rate—eight one-hundredths of 1 percent and—it protects consumers from economic harm. Calculations show that the SET would add only one one-hundredth of 1 penny to the price of a loaf of bread, and only $6 to the price of a mid-sized American car. By contrast, the chemical feedstock tax increases in the Downey-Frenzel substitute would force some U.S. producers to close their doors, driving jobs and manufacturing capacity overseas.

Fourth, the SET is a carefully targeted revenue tax, which, by law, can be applied only to Superfund cleanup. Similarly, the rate is set by law. Absent separate congressional action, the rate cannot be increased and the tax cannot be used for any other purpose.

In sum, the Ways and Means superfund tax legislation is a fair means of providing cleanup money. It does so in a way that avoids economic burdens and protects domestic industry and jobs from unfair foreign competition.

Mr. HENRY. Mr. Chairman, I want to take this opportunity to rise in support of section 212 of the Superfund reauthorization legislation currently before the House. The provisions of this section, providing for research, development, and demonstration projects for innovative hazardous waste treatment technologies are badly needed. The small amount of Federal funds provided for in this section are a potentially tremendous investment in at last making real progress in controlling hazardous wastes within Superfund sites.

In hearings before the NRARE Subcommittee of the Science and Technology Committee, on which I serve, we were told that 87 percent of the current repositories of hazardous wastes now in use are in danger of leaking, and probably one half of all new storage facilities currently under construction may themselves become Superfund sites.

Clearly, much of the currrent problem facing this country in regard to hazardous wastes is the simple fact that innovative technologies capable of eliminating or vastly reducing the amount and toxicity of waste are either not available or are little used. This has led to the sad fact that in many cases Superfund and other toxic waste sites have not been cleaned up, but rather their waste have simply been shifted from place to place. Moving wastes from site to site, without actually reducing their amount or toxicity, is no permanent answer to the hazardous waste problem.

This deplorable situation is addressed in the current legislation before the House. Section 212 is aimed at encouraging innovative treatment technologies, their testing, evaluation, and implementation and, hopefully, widespread application to reduce the actual amount of hazardous wastes. The legislation also provides for participation from public entities, nonprofit laboratories, universities, and the private sector in reducing hazardous waste levels.

Briefly, the legislation provides authority in three areas through the establishment of grant programs for health research and training, for research and demonstration involving innovative cleanup technologies, and for regional hazardous waste research centers at universities. To coordinate these efforts, the legislation also sets up advisory councils in each area.

First, it authorizes a 5-year, $98 million program for a hazardous substance research, development, and training program, in which the National Institute of Environmental Health Sciences in HHS would contract with universities to help find ways to reduce threats to human health and environment. Universities could subcontract with private firms and State and local governments.

Second, the legislation authorizes $100 million over 5 years for a Superfund RD&T Program to encourage research in and demonstration of innovative technologies designed to provide permanent cleanup. EPA would be required to designate at least 10 such field R&D sites in each of the 5 years, either running these projects itself or contracting with public, nonprofit private, or university entities. Special liability standards would be set to allow researchers to test their technologies.

Third, the bill would authorize $25 million for EPA to make grants to universities to establish and operate at least five hazardous waste research centers.

The dollar amounts provided for in this section are small. But the potential benefit to society are great. I applaud the work of those in the Science and Technology Committee, especially Mr. TORRICELLI and Mr. SCHEUER, as well as the chairmen and ranking members of all the committees involved in the reauthorization of Superfund, for recognizing the need for innovative treatment technologies and incorporating provisions in the legislation before us.

Mr. BRUCE. Mr. Chairman, I am pleased today to rise in support of the reauthorization of the Superfund Program. As we are all aware, this has been a controversial bill. Unfortunately most of the controversy arises because of the dismal performance of the Environmental Protection Agency. If EPA were aggressively implementing the current law, many of the provisions of this bill would be unnecessary. However, EPA has performed poorly and any Superfund reauthorization must establish standards and goals for cleaning up the Nation's hazardous wastes.

In 1980, Congress passed the original Superfund law that committed $1.6 billion to the cleanup of abandoned hazardous waste sites. EPA has listed more than 800 sites as national priority sites for cleanup, out of the 23,000 such facilities that are known to exist across the country. In my own State of Illinois, we have 22 toxic sites on the National Priorities List, with two of those sites in my district.

Unfortunately, after 5 years of EPA effort, two sites on the National Priorities List have been cleaned up. EPA's record on all other parts of this program is equally as disappointing. If we have learned anything from the experiences from the last 5 years, it is that without a clear directive from Congress the EPA will do nothing. Leaving the agency to follow its preferences is not helpful to the environment, to public health, or even to the companies whose money is being used to pay for these cleanups.

I have always believed that a credible effort to reform the Superfund Program must contain, at a minimum, the following provisions:

A strict, mandatory annual schedule for the initiation of cleanup at priority sites;

Uniform national cleanup standards to determine when work at a site has been sufficient to protect human health and the environment. Such standards must mandate permanent treatment of Superfund sites;

Establishment of a citizen's right to sue polluters for cleanup when EPA and the States are not acting on the site;

Prohibition of sweetheart deals in which polluters' future liability for undetected contamination is waived and the fund is left to absorb all cleanup costs;

Establishment of a strong and effective community right to know program which requires the disclosure of basic information about the nature and scope of toxic emissions from operating chemical plants.

I am extremely pleased that this compromise incorporates the items which I have mentioned. There are strong annual schedules, real cleanup standards, liability for future releases, citizens' suits, and a community right-to-know. I believe the bill can be improved in some areas, and I think there will be various amendments offered which address these important concerns and deserve our support. For instance, I hope amendments will be added to the bill that will strengthen the communities right to know provision by requiring the tracking of chronic health effect chemicals into the environment and a provision to establish a Federal cause of action giving innocent victims of hazardous substances the ability to sue in Federal court.

I feel that we all can be proud of the public policies outlined in this legislation. By passing this bill, the House will be better defining the standards for cleaning up hazardous waste sites as well as ensuring that the residents of the affected communities are part of any long-term solution.

Mr. KLECZKA. Mr. Chairman, I rise in

strong support of this Superfund reauthorization, and urge its passage in the House.

Back in 1980, when the Superfund Program was first enacted, Congress had only a partial understanding of the hazardous waste problem. Initially, it seemed that cleaning up some 500 priority sites would provide a permanent solution to toxic hazards.

Recent studies, however, by the Office of Technology Assessment and the Environmental Protection Agency, suggest that there may be as many as 10,000 toxic waste dumps in America that pose an imminent health risk. Moreover, we are still learning the effects of toxic wastes on ground water and other critical resources.

These discoveries require a strong response by the Federal Government, and I am pleased to say that the bill before us is such a response. Mandatory cleanup schedules, broad community right-to-know provisions, tough cleanup standards, citizen suit provisions and a $10 billion funding level over 5 years make this bill landmark commitment to a cleaner environment.

Perhaps most important is the mandate this bill provides to the administration to commit its full energies to enforcing Superfund. EPA's reluctance to comply with the law in its early years has been well documented; to date, only six sites on the national priorty list have been completely cleaned up. In my own congressional district, in fact, there are two national priority list sites awaiting Federal action.

In the midst of our difficult efforts to reduce the deficit and restore our trade position, it is important that we remember America's most vital long-term resource: the environment. I am proud to support this bill, and ask my colleagues to register their support for a cleaner and healthier America.

Mr. APPLEGATE. Mr. Chairman, I would like to take this opportunity to explain my opposition to the proposed mechanisms for financing Superfund.

I believe that many of my colleagues will agree with the fact that all three proposals are flawed and that the long-term effect of any of these proposals is that the consumer pays, not the polluter. We are, therefore, faced with the decision of voting on the lesser of three evils. This section of the legislation should be formulated in a much more reasonable and more effective manner. I am pleased to say that there is an alternative that will meet this criteria. I only wish that we had the opportunity to consider this alternative.

The alternative is based on a law that passed in 1974. The Hazardous Material Transportation Act of 1974, mandated the Secretary of Transportation to establish and maintain a central reporting system and data center in the transporting of hazardous materials. This section of law was never properly implemented and we now have a system that is inadequate and dangerous.

I am pleased to report to this House that there is a system available that would implement to the fullest extent, the purpose and intent of the 1974 law. We would have the ability to control the transporting of hazardous materials, reduce the risks involved for communities as well as those transporting, and fund Superfund at an appropriate level. This commuterized system is available now and we can make it work at a reasonable cost to business.

This system perfects the current manifest system that was implemented by the Chemical Manufacturing Association [CMA] in response to the 1974 law. CMA's attempt is commendable, but the system lacks the proper controls and enforcement mechanisms. CMA's system is also more expensive than the system that I support. DuPont has reported that their costs for manifesting to be $35. This new system would carry with it a cost of $10 per manifest. This $10 fee also includes the filing of the necessary semiannual State and Federal reports for industry, saving millions of additional dollars. This new system is the answer to the problems surrounding Superfund legislation. It allows for community right to know, it reduces the risks currently involved in hazardous material transportation, and it protects our constituents from unnecessary exposure to hazardous materials.

Based on these merits alone this system should be implemented. However, as I stated, this system would provide a mechanism to fund this environmental legislation. We could increased the $10 manifest cost to $20, the additional $10 would be used to cleanup our environment. Keep in mind that $20 a manifest is still much lower than the current $35. The system is designed to provide the Treasury Department with the necessary information and could even work to collect these funds. This would not be a tax, it would be an operating cost that already exists and is required by law.

I had planned to offer an amendment at the committee level that would have required the full and complete implementation of the 1974 law, however, I was advised by leadership to wait and include this provision in the reauthorization of the Motor Carrier Safety Act. Had I known that I would be forced to vote on an amendment simply because it is the lesser of three evils,

I would have pursued this option much more aggressively. The three proposals offered to finance Superfund are harmful, unfair, costly, and more importantly they are not trade neutral. The crisis in trade is only made worse and we simply cannot afford any further imbalance. I cannot offer my support to any provision that exports jobs and increases our trade imbalance.

We are agreeing to a section to Superfund that we all know is flawed and unfair. How can this be justified when the technology is available that would require the true polluter to pay. I have heard many of my colleagues state on the House floor that these proposals are imperfect, but they were the best possible alternative. Imperfect? Yes. Best possible alternative? No. By accepting the financing mechanism included in the bill, instead of the one I have discussed, we have flawed what was once a sound piece of legislation.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. The Chair informs the committee that under a previously approved unanimous consent request there will now be 15 minutes debate on the previously adopted Edgar amendment. That amendment is not subject to a vote at this time; but under the unanimous consent request, there will be 7½ minutes on each side.

The gentleman from Pennsylvania [Mr. Edgar] will control 7½ minutes and the gentleman from Ohio [Mr. Eckart] will control 7½ minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. Edgar].

Mr. EDGAR. Mr. Chairman, I am very surprised that there is the extent of controversy about this bill, and I want my colleagues to know that the gentleman from Pennsylvania did not request the additional time. We discussed this fully on Thursday night, and a vote was cast and I was successful. We now have another set of circumstances where we are going to discuss the merits of this issue. I hope the Members will listen clearly because the merits have not changed and we need the attention of the committee on this very important issue.

Mr. Chairman, for the purposes of our opening debate, I yield 2½ minutes to the gentleman from Minnesota [Mr. Sikorski].

(Mr. SIKORSKI asked and was given permission to revise and extend his remarks.)

Mr. SIKORSKI. Mr. Chairman, the American Lung Association is on record supporting the listing of chronic hazards under the community right-to-know provision of Superfund. It has specifically endorsed amendments to do just that included in the bill passed overwhelmingly and without opposition by the other body, but it has not specifically reviewed the language in Edgar-Sikorski. At least 47 other groups have likewise gone on record supporting the inclusion of chronic health hazards—steel workers, AFL-CIO, League of Women Voters, U.S. Conference of Mayors, International Association of Fire Fighters, the National Association of Local Governments and Hazardous Waste, the League of Conservation Voters, and 43 others.

In the legislative process, we often hear a general curious attack against something that people want, something supported by the facts.

Mr. Chairman, it was not this side's desire to have another debate and impose on the time of the Members, but we are in this situation. Repeatedly in the legislative process we have these general curious attacks on proposals that are supported by the facts, supported by logic, and supported overwhelmingly by the people. We are told at different times that a proposal will cause horrendous, incredibly negative consequences, burden small businesses, destroy family farming, cause horrendous paperwork, flat feet, falling arches and hair, and the heartbreak of psoriasis. These horribles are marched in front of us in a manner that would make John Phillip Sousa proud of the parade.

You have all seen this parade of horribles time and time again in the legislative process, and this week we have been treated to it again, against community right to know. Yet the music is sour, the notes off key, it is based on fearful nonsense. Community right to know does not touch farmers and small businesses or create mounds of paperwork. Two States already do it without the horribles. And the other body adopted an even stronger community right-to-know provision without controversy or opposition.

Mr. Chairman, the issue is simple. If you want your constituents to know of chemical releases causing cancer, brain damage, and birth defects, vote for Edgar-Sikorski. If you do not, do not vote for it. If you want your fire, police, and medical personnel to know the chemicals they are exposed to, vote for Edgar-Sikorski. If you do not, vote against it. If you want your constituents to know of poison in the soil of their kids' playground, in the air they breathe, and in the water their neighborhood drinks, vote for Edgar-Sikorski. If you do not want them to know that, vote against that.

Mr. ECKART of Ohio. Mr. Chairman, I yield 1½ minutes to the gentleman from Washington [Mr. Swift].

(Mr. SWIFT asked and was given permission to revise and extend his remarks.)

Mr. SWIFT. Mr. Chairman, as a Member who was very involved in the development of the community right-to-know provisions, I must tell you that the committee took them very seriously. The question here is: Is the community going to be able to utilize effectively the information it knows?

I suspect every Member here, either as an individual or in the committee that the Member has worked on, has had the experience where they have asked an agency for some information, asked them some tough questions that they did not want to answer, and so they love you to death. They send a truckload of documentation up here, and you are buried under it and you cannot find out what you want to know.

The Edgar amendment unintentionally has done the same thing to communities. It will bury most communities under a volcano of annual reports.

We have a wire here from the National Association of Counties, which says, in part, that the Edgar amendment will seriously undermine and divert community emergency response committees. Submission of status sheets for chronic hazards will overwhelm the capabilities of these communities.

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What is so serious about this is that the intent of the original provision of the bill was to be sure that each community knew with precision what acutely hazardous substances existed in that community. That is defined in "those substances which can pose imminent and substantial threat to public health and safety."

The Edgar amendment loves that provision to death. It requires so much more information on so many more substances that it will make it all but impossible for all but the very most sophisticated local governments to be able to absorb and handle that information.

Mr. EDGAR. Mr. Chairman, I yield 1 minute to the gentleman from Minnesota [Mr. Penny].

(Mr. PENNY asked and was given permission to revise and extend his remarks.)

Mr. PENNY. I thank the gentleman for yielding me this time.

Mr. Chairman, many of us have heard allegations that the Edgar-Sikorski Superfund amendment to require reporting of emissions of cancer-causing chemicals would hurt farmers. Nothing could be farther from the truth.

Let's get the facts straight:

The bill as drafted directs the EPA Administrator to set threshold amounts for reporting. The Agency can and should set amounts high enough to exclude family farmers and others with minimal emissions.

The Edgar-Sikorski amendment does not require that any pesticide be banned or removed from farm use. It is a right-to-know provision, requiring only that a heavy user of a carcinogen file a 1-page report each year so that his neighbors will know what they're exposed to. Is that too much to ask?

Finally, in an amendment to the Superfund bill the gentleman from Illinois [Mr. Madigan] specifically excluded pesticides from liability under Superfund.

Any remaining questions about family farmers can be easily handled in conference. I ask my colleagues to again support the right of their constituents to know when they are breathing or drinking cancer-causing chemicals. Vote "yes" on Edgar-Sikorski.

Mr. ECKART of Ohio. Mr. Chairman, I yield 1 minute to the gentleman from North Carolina [Mr. Rose].

(Mr. ROSE asked and was given permission to revise and extend his remarks.)

Mr. ROSE. I thank the gentleman for yielding me this time.

Mr. Chairman, the gentleman that just preceded me made a point about agriculture, and I share his concern about agricultural reporting also. But I take an entirely different interpretation, and because of that I oppose this amendment.

In the sheet that is before you, "Reasons to Vote 'Yes,'" it says, "The EPA has full discretion to set both the list and the reporting threshold," so there is no problem with burdensome numbers or paperwork. That is the point that Mr. Penny was attempting to make.

It is for that very reason that I am worried. I am worried because I do not know what the EPA is going to say both the list and the threshold is going to look like. If we had the list, if we had the threshold, it might be reasonable, but since it is not, we can only imagine the worst. The National Council of Farmer Cooperatives says that increased reporting can cost us more in food prices. The American Farm Bureau Federation is concerned that without the threshold and without the list we could have every farmer sending in a report for every application of a pesticide or fertilizer.

I urge a "no" vote.

Mr. ECKART of Ohio. Mr. Chairman, I yield 1 minute to the gentleman from Kentucky [Mr. Snyder].

Mr. SNYDER. I thank the gentleman for yielding me this time.

Mr. Chairman, I would just like to follow up on what the gentleman from North Carolina said. Mr. Penny may believe that it will not hurt the farmer, but the EPA says it will. In their letter of December 6, they said it will cover over 1 million farmers. The Department of Agriculture believes it will. In Mr. Block's letter of today, he says,

> Because of the expansion of the definition provided in the Edgar amendment and the broad reporting requirements, over 1 million farmers could be required to compile and submit emissions information to local emergency and planning agencies.

The American Farm Bureau believes that it does, as does the National Council of Farmers. In addition to that, Mr. Chairman, I would like to bring up the point that the Association of American Medical Colleges and the American Council on Education, which are the organizations which collectively represent all institutions of higher education as well as, and get this, the Nation's major teaching hospitals, indicate that under this provision huge amounts of resources will needlessly be diverted by requiring institutions to constantly monitor the release of thousands of chemicals used in ongoing research and patient care activities.

We do not need to do violence to these organizations and their efforts.

The full text of the letters from Secretary Block and Dr. John Cooper, president of the Association of American Medical Colleges, follow:

Department of Agriculture,
Office of the Secretary,
Washington, DC, December 10, 1985.

Hon. Edward R. Madigan,
Ranking Minority Member, Committee on Agriculture, House of Representatives, Washington, DC.

Dear Congressman Madigan: I am extremely concerned about the action taken last week by the House of Representatives adopting the Edgar amendment to the Community Right-to-Know section of "The Superfund Amendments Act of 1985," and the adverse impact it could have on this nation's already troubled farm sector.

Because of the expansion of the definition of "extremely toxic substances," provided in the Edgar amendment and the broad reporting requirements, over one million farmers could be required to compile and submit emissions information to local emergency planning agencies. I do not believe that this information will provide any environmental protection or health benefit to the farmers or their local communities. It will, however, place an additional, unnecessary and potentially burdensome reporting requirement on them.

I urge the House to reconsider its position and defeat the Edgar amendment.

Sincerely,

John R. Block,
Secretary of Agriculture.

December 9, 1985.

Dear Representative: The Association of American Medical Colleges (AAMC) and the American Council on Education (ACE) are writing to express their opposition to the Edgar-Sikorski amendment added last week to Section 311(c) of H.R. 2817, "Superfund Amendments of 1985." An amendment will be offered imminently on the House floor to strike the Edgar-Sikorski language from H.R. 2817, and we urge you to support this effort.

Our Associations collectively represent all institutions of higher education, as well as the nation's major teaching hospitals, concerned that the health of the American people be protected against the release of hazardous substances into the environment. However, the extensive, costly and time-consuming reporting requirements that would be necessitated by the Edgar amendment levy an unnecessarily high cost in a well intended but faultily executed instrument to achieve that objective. This provision requires the monitoring and reporting to local government entities of the release—however infinitesimal—of chemicals "which are known to cause or are suspected of causing cancer, birth defects, inheritable genetic mutations, or other chronic health effects in humans." Under it, huge amounts of resources could needlessly be diverted, by requiring institutions to constantly monitor the release of thousands of chemicals used in ongoing research and patient care activities. Dangerous chemical releases are already regulated under the Clean Air Act.

While it is reasonable to require institutions to report to local governments on the release of wastes that are acutely toxic, as does H.R. 2817, it is not reasonable to mandate the reporting of the smallest amounts of substances that are only suspected of causing health risks. At issue here is the appropriate balance of health and environmental considerations and the operational realities facing individual institutions. Unfortunately, the Edgar amendment is heavily tilted towards inchoate fears about health risks. There is conceivably almost no limit to the reporting requirements embodied in the Edgar-Sikorski amendment. We urge you to reject this amendment and focus monitoring efforts where they are most needed.

Sincerely,

John A.D. Cooper, M.D., Ph.D.,
President, Association of American Medical Colleges.

Robert H. Atwell,
President, American Council on Education.

Mr. EDGAR. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. Molinari].

Mr. MOLINARI. I thank the gentleman for yielding me this time.

Mr. Chairman, in 1 minute the Superfund bill that we will pass I think is going to do a superb job and we have addressed very well the issue of acute releases. In my judgment, something far more important is the issue of chronic releases.

In June of this year, my staff compiled a work called "Ill Winds" which was circulated in June to every office. What it shows is that as a result of the acute releases, those counties that are downwind of petrochemical complexes have amazingly high incidences of cancer. Now, we do not factor in smoking; we cannot claim it is a scientific work, and we do not. But the facts are indisputable. Look at it. If you read it, the arguments for the Edgar amendment are compelling.

For an area like mine, this is far more important than acute releases. I beg you, I urge you to support the Edgar amendment.

Mr. ECKART of Ohio. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. Lent].

(Mr. LENT asked and was given permission to revise and extend his remarks.)

Mr. LENT. I thank the gentleman for yielding time to me.

Mr. Chairman, the plain and simple truth is that the Edgar amendment has the potential to devastate our Nation's small businesses.

Since passage of this amendment, we have heard from scores of small businesses urging that this vote be reversed. I have a letter here from the National Federation of Independent Businesses, representing over 500,000 business owners, strongly urging a "no" vote.

The original compromise bill's provision, agreed to by both the House Energy and Commerce and Public Works Committees, already addresses the public's right to be informed about hazardous substances, the releases of "which are likely to cause an imminent and substantial endangerment to the public health." Further, it addresses the needs of the emergency response community to mitigate such endangerment. The compromise bill establishes a careful system of planning and preparedness for emergencies involving releases of hazardous substances.

The focal point of the Communities Right To Know Program should be to protect human health by ensuring that an emergency response mechanism is in place. The relationship of the Edgar amendment to this goal is not apparent. An effective emergency response program should not be burdened with extraneous data and paper concerning emergency risks which are not real. Volumes of paper and information of no particular relevance will only increases the danger that a true emergency will not receive effective response; a point made by the Association of Counties and the International Association of Fire Chiefs.

EPA Administrator Lee Thomas has informed us that, under the Edgar amendment, millions of hardware stores, beauty parlors, gas stations, hospitals, schools, dry cleaners and department stores will have to document the amount of all chemicals, in any amount, that are released. This would be required regardless of the size of the business. This makes little sense.

I urge my colleagues to reject the Edgar amendment.

In addition to the paperwork burden, those newly-covered businesses might be uninsurable, given the growing unavailability or prohibitive cost of liability insurance when so-called "toxic torts" are initiated.

□ 1850

Mr. EDGAR. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. Waxman].

Mr. WAXMAN. Mr. Chairman, after the Bhopal tragedy we looked at the chemical industry and we found that many chemicals are coming out of those chemical plants around this country. We do not know about them. Only six are being regulated. Rather than regulate, the Edgar amendment says at least let us get an inventory. This is in the bill now. The community right to know is the right to know what is going into the air that people are exposed to.

The bill says that only those very toxic chemicals will be listed. That excludes dioxin, PCB's, very dangerous chemicals that cause cancer and birth defects. Let us at least get them listed.

Are you worried that they are going to be listed where they are really not a factor? Well, the EPA can only list them if they are over a certain threshold. That makes it so that we are not regulating to get information about chemicals that are not really going into the air for a large amount of exposure. If they are going into the air over that threshold, we ought to know about those chemicals that cause chronic disease, not just those that kill people immediately.

If you believe in the community's right to know, they ought to have this information so that they can then use it to say that they want protection from those chemicals that kill them.

The CHAIRMAN. The Chair recognizes the gentleman from Ohio [Mr. Eckart] who has 3 minutes remaining.

Mr. ECKART of Ohio. Mr. Chairman, I reserve the balance of my time for the purpose of closing the debate.

The CHAIRMAN. The Chair recognizes the gentleman from Pennsylvania [Mr. Edgar] who has 1½ minutes remaining.

Mr. EDGAR. Mr. Chairman, I yield 30 seconds to the gentleman from New Jersey [Mr. Florio].

(Mr. FLORIO asked and was given permission to revise and extend his remarks.)

Mr. FLORIO. Mr. Chairman, the result of striking the Edgar amendment from the bill will leave us with a situation where communities will have a right to know what it is to be reported in the annual report with regard to toxic chemicals, but only those that are acutely toxic, as opposed to those that are chronically toxic. That means they will have no information provided to them with regard to asbestos, no information with regard to dioxin, PCB's, benzene, tuolene, all known carcinogenic materials, will not be required to be reported under the provision of the Edgar amendment, if struck.

Mr. WIRTH. Mr. Chairman, when we proceed to final consideration of H.R. 2817, the Superfund bill, it is expected that a motion will be made to reconsider the Edgar-Sikorski amendment which we wisely adopted late last Thursday evening. At that time, I urge my colleagues to vote to retain these important public health protection requirements.

As brought to the floor, H.R. 2817 provides for a critical step toward ensuring that our communities—their citizens and their emergency response authorities—would be apprised of the volumes and types of acute substances which are emitted into their environments. That is a long-overdue step. The authors of the compromise Superfund legislation are to be commended for taking this action.

It is important to note that the Edgar-Sikorski amendment does. As adopted last week, this proposal simply extends the coverage of Superfund emissions inventory requirements to include chronic substances, including such clearly recognized dangerous substances as dioxin and benzene. On the other hand, Edgar-Sikorski does not impose, as its opponents have alleged, any onerous reporting requirements on industry. In fact, as adopted, the amendment grants discretion to the Environmental Protection Agency to set specific threshold levels at which the reporting requirements will be triggered. I believe that this reasonable compromise will prevent the unnecessary imposition of these reporting requirements on small business and individual handlers.

Mr. Chairman, over the past decade, our national awareness of the long-term health effects of exposure to even minute levels of hazardous substances has grown considerably. The American public has rightfully demanded that it be protected—to the maximum extent feasible—from such exposure. It seems but a small step in that direction to require that large volume handlers of both acute and chronic substances provide our citizens with the information necessary to assess dangerous chemicals handled in their communities.

Edgar-Sikorski provides the opportunity to take a long-overdue step toward protecting our communities and I urge my colleagues to retain this important provision in the legislation before us today.

The CHAIRMAN. The Chair recognizes the gentleman from Pennsylvania [Mr. EDGAR].

Mr. EDGAR. Mr. Chairman, the gentleman from Pennsylvania inquires of the manager of the bill whether he has only one additional speaker in his time.

Mr. ECKART of Ohio. That is correct. I am the last speaker to close debate on our side.

Mr. EDGAR. Mr. Chairman, I yield myself the final 1 minute.

Mr. Chairman, for the life of me, I cannot understand what we are trying to hide from the American people. We are talking about poisons. Whether the poison kills you today or tomorrow or next week, we are talking about poisons.

The bill only includes "acute," unless the Edgar amendment is there.

Does your community have the right to know whether workers are being exposed to vinyl chloride or dioxin or toluene? Does a mother have the right to know whether her children are playing in PCB's or dioxin released from a nearby factory? Do pregnant women have the right to know the amounts of discharges which may cause birth defects in their children?

I say yes, and I think it is incumbent upon this House, not only to listen clearly to what the amendment does, but to support this amendment. It does not impose excess burdens on small business. It does not impose excess burdens on farmers. It helps firefighters and hospitals and communities to know that poisons are in their communities.

We have a responsibility as a House to give them their right to know.

Mr. Chairman, I urge support for the amendment.

The CHAIRMAN. The Chair recognizes the gentleman from Ohio [Mr. ECKART].

Mr. ECKART of Ohio. Mr. Chairman, I yield myself the balance of the time.

(Mr. ECKART of Ohio asked and was given permission to revise and extend his remarks.)

Mr. ECKART of Ohio. Mr. Chairman, last Thursday I joined with the majority of you in voting for the Edgar-Sikorski amendment. I joined with you in voting for this amendment because of two important representations. First, that it was similar to that which passed unanimously in the other body, and second, that there had been an adequate opportunity to discuss these provisions.

Well, Mr. Chairman, in fact what has been the case is that this provision is not similar to what is included in the other body. In fact, our provision now, as amended by the Edgar-Sikorski amendment, does not include exemptions for small businesses that produce twenty-thousand pounds of a chemical a year or less, businesses that use two-thousand pounds of a chemical a year or less, or that employ 10 people a year or less. These are fundamental differences.

I supported the Edgar-Sikorski amendment because I believed it had substantial support in the community. Since its passage, I received a letter from the American Lung Association, a group which was listed on the literature just distributed on this floor as in support of the bill. Let me read to you what they say:

> The American Lung Association was not consulted regarding support for this specific amendment and is unfamiliar with its content and therefore takes no position.

Now, Mr. Chairman, I have not had an opportunity to examine all the other alleged supporters of this particular amendment, but I certainly urge caution regarding the representations which have been made.

We have also been told to rely on EPA's flexibility. Well, the supporters of the amendment said they oppose the Energy and Commerce bill because it gives the EPA too much flexibility." Now they say, "trust the EPA because it needs the flexibility."

It has been argued that this provision is similar to the Senate measure, but in fact the Senate has only a temporary program, not a permanent national enforcement program. It was represented in the RECORD that we were looking at between 300 and 400 chemicals tops, when in reality we are talking about close to 5,000 chemicals.

Mr. Chairman, I believe that we, or at least I, was mislead as to the direction and intent of the language. The impact, its breadth, the similarity of this amendment to language allegedly included in its exact same form in the other body, is not to be found in this amendment. An analysis shows how much was left out of the Edgar-Sikorski amendment from the Senate provision to which it was allegedly similar.

Mr. Chairman, it is not easy for any of us to change our votes. It is a difficult proposition; but as Winston Churchill said when asked why he made a decision change during the course of World War II, "I made yesterday's decision based on yesterday's information. I make today's decision with today's information."

Today's information shows that the supporters were not correct. The language was not the same. The impact is too broad, too deep. We need to reject, with correct hindsight, the Edgar-Sikorski amendment.

The CHAIRMAN. The question is on the amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. BROWN of California] having assumed the chair, Mr. HOYER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2817) to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes, pursuant to House Resolution 331, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment in the nature of a substitute adopted by the Committee of the Whole?

Mr. DINGELL. Mr. Chairman, I demand a separate vote on the so-called Edgar amendment.

The SPEAKER pro tempore. Is a separate vote demanded on any other amendment?

The Clerk will report the amendment on which a separate vote had been demanded?

The Clerk read as follows:

Amendment: Page 279, in line 19, insert the following before the period: "and chemicals (such as vinyl chloride, benzene, asbestos, and poly chlorinated biphenyls) which are known to cause or are suspected of causing cancer, birth defects, heritable genetic mutations, or other chronic health effects in humans".

The SPEAKER pro tempore. The question is on the amendment.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. EDGAR. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 212, nays 211, not voting 11, as follows:

[Roll No. 446]

YEAS—212

Ackerman
Addabbo
Akaka
Alexander
Anderson
Annunzio
Applegate
Aspin
Atkins
AuCoin
Barnes
Bates
Bedell
Beilenson
Bennett
Berman
Biaggi
Boehlert
Boland
Boner (TN)
Bonior (MI)
Borski
Bosco
Boucher
Boxer
Brown (CA)
Bruce
Bryant
Burton (CA)
Bustamante
Carper
Clay
Clinger
Coleman (TX)
Collins
Conte
Conyers
Coughlin
Courter
Coyne
Daschle
de la Garza
Dellums
Dicks
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Downey
Durbin
Dwyer
Dyson
Early
Edgar
Edwards (CA)
Erdreich
Evans (IL)
Fascell
Fawell
Fazio
Fish
Flippo
Florio
Foglietta
Fowler
Gibbons
Gilman
Glickman
Gonzalez
Goodling
Gordon
Gray (IL)
Gray (PA)
Green
Gregg
Guarini
Hall (OH)
Hamilton
Hawkins
Hayes
Heftel
Hertel
Horton
Howard
Huckaby
Hughes
Jacobs
Jeffords
Jenkins
Kanjorski
Kaptur
Kastenmeier
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Kostmayer
LaFalce
Lantos
Leach (IA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lipinski
Long
Lowry (WA)
MacKay
Manton
Markey
Martinez
Matsui
Mavroules
McCloskey
McCurdy
McDade
McGrath
McHugh
McKernan
Mica
Mikulski
Miller (CA)
Miller (WA)
Mineta
Mitchell
Moakley
Molinari
Moody
Morrison (CT)
Obey
Ortiz
Owens
Panetta
Pease
Penny
Pepper
Petri
Pickle
Rahall
Rangel
Reid
Richardson
Ridge
Rinaldo
Robinson
Rodino
Roe
Roemer
Rostenkowski
Roukema
Rowland (CT)
Roybal
Russo
Sabo
Savage
Saxton
Scheuer
Schneider
Schroeder
Schumer
Seiberling
Sensenbrenner
Sharp
Sikorski
Smith (FL)
Smith (IA)
Smith (NJ)
Smith, Robert (NH)
Snowe
Solarz
Spratt
St Germain
Staggers
Stallings
Stark
Stokes
Studds
Thomas (GA)
Torres
Torricell
Towns
Traficant
Traxler
Udall
Vento
Visclosky
Volkmer
Waxman
Weaver
Weiss
Wheat
Williams
Wirth

Frank
Gallo
Garcia
Gaydos
Gejdenson
Gephardt
Mrazek
Murphy
Neal
Nowak
Oakar
Oberstar
Wise
Wolf
Wolpe
Wyden
Yates
Yatron

NAYS—211

Andrews
Anthony
Archer
Armey
Badham
Barnard
Bartlett
Barton
Bateman
Bentley
Bereuter
Bevill
Bilirakis
Bliley
Bonker
Boulter
Breaux
Broomfield

Brown (CO)
Broyhill
Burton (IN)
Byron
Callahan
Campbell
Carney
Carr
Chandler
Chapman
Chappell
Cheney
Coats
Cobey
Coble
Coelho
Coleman (MO)
Combest
Cooper
Craig
Crane
Crockett
Daniel
Dannemeyer
Darden
Daub
Davis
DeLay
Derrick
DeWine
Dickinson
Dingell
Dornan (CA)
Dowdy
Dreier
Duncan
Dymally
Eckart (OH)
Eckert (NY)
Edwards (OK)
Emerson
English
Evans (IA)
Feighan
Fiedler
Fields
Foley
Ford (MI)
Ford (TN)
Franklin
Frenzel
Frost
Fuqua
Gekas
Gingrich
Gradison
Grotberg
Gunderson
Hall, Ralph
Hammerschmidt
Hansen
Hartnett
Hatcher
Hefner
Hendon
Henry
Hiler
Holt
Hopkins
Hoyer
Hubbard
Hunter
Hutto
Hyde
Ireland
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kasich
Kemp
Kindness
Kramer
Lagomarsino
Latta
Leath (TX)
Lehman (CA)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lloyd
Loeffler
Lott
Lowery (CA)
Lujan
Luken
Lundine
Lungren
Mack
Madigan
Marlenee
Martin (IL)
Martin (NY)
Mazzoli
McCain
McCandless
McCollum
McEwen
McMillan
Meyers
Michel
Mollohan
Monson
Montgomery
Moore
Moorhead
Morrison (WA)
Murtha
Myers
Natcher
Nichols
Nielson
O'Brien
Olin
Oxley
Packard
Parris
Pashayan
Perkins
Porter
Pursell
Quillen
Ray
Regula
Ritter
Roberts
Rogers
Rose
Roth
Rowland (GA)
Rudd
Schaefer
Schuette
Schulze
Shaw
Shelby
Shumway
Shuster
Siljander
Sisisky
Skeen
Skelton
Slattery
Slaughter
Smith (NE)
Smith, Denny (OR)
Smith, Robert (OR)
Snyder
Solomon
Spence
Stangeland
Stenholm
Strang
Stratton
Stump
Sundquist
Sweeney
Swift
Swindall
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (CA)
Valentine
Vander Jagt
Vucanovich
Walker
Watkins
Whitehurst
Whitley
Whittaker
Wilson
Wortley
Wright
Wylie
Young (AK)
Young (FL)
Young (MO)
Zschau

NOT VOTING—11

Boggs
Brooks
Chappie
Hillis
McKinney
Miller (OH)
Nelson
Price
Walgren
Weber
Whitten

☐ 1915

Mr. DE LA GARZA and Mr. ALEXANDER change their votes from "nay" to "yea."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute as amended, was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. DE LAY

Mr. DeLAY. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. DeELAY. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. DeLay moves to recommit the bill, H.R. 2817, the Superfund Amendments of 1895, to the Committee on Energy and Commerce, the Committee on Public Works and Transportation, and the Committee on Ways and Means.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it

Mr. WALKER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 391, nays 33, not voting 10, as follows:

[Roll No. 447]

YEAS—391

Ackerman
Addabbo
Akaka
Alexander
Coats
Cobey
Coble
Coelho
Flippo
Florio
Foglietta
Foley

Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Barnard
Barnes
Bateman
Bates
Bedell
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Biaggi
Bilirakis
Bliley
Boehlert
Boggs
Boland
Boner (TN)
Bonior (MI)
Bonker
Borski
Bosco
Boucher
Boxer
Breaux
Broomfield
Brown (CA)
Brown (CO)
Broyhill
Bruce
Bryant
Burton (CA)
Bustamante
Byron
Campbell
Carney
Carper
Carr
Chandler
Chapman
Chappell
Clay
Clinger
Coleman (MO)
Coleman (TX)
Collins
Conte
Conyers
Cooper
Coughlin
Courter
Coyne
Craig
Crockett
Daniel
Dannemeyer
Darden
Daschle
Daub
Davis
de la Garza
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Dreier
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart (OH)
Edgar
Edwards (CA)
English
Erdreich
Evans (IA)
Evans (IL)
Fascell
Fawell
Fazio
Feighan
Fiedler
Fields
Fish
Ford (MI)
Ford (TN)
Fowler
Frank
Frenzel
Frost
Fuqua
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Gray (IL)
Gray (PA)
Green
Gregg
Grotberg
Guarini
Gunderson
Hall (OH)
Hall, Ralph
Hamilton
Hammerschmidt
Hansen
Hatcher
Hawkins
Hayes
Hefner
Heftel
Hendon
Henry
Hertel
Hiler
Holt
Hopkins
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kasich
Kastenmeier
Kemp
Kennelly
Kildee
Kindness
Kleczka
Kolbe
Kolter
Kostmayer
Kramer
LaFalce
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MacKay
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Markey
Martin (IL)
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Matsui
Mavroules
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McCain
McCandless
McCloskey
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McCurdy
McDade
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Mica
Michel
Mikulski
Miller (CA)
Miller (WA)
Mineta
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Moorhead
Morrison (CT)
Morrison (WA)
Mrazek
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Myers
Natcher
Neal
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Ortiz
Owens
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Packard
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Pashayan
Pease
Penny
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Perkins
Petri
Pickle
Porter
Pursell
Quillen
Rahall
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Ray
Regula
Reid
Richardson
Ridge
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Robinson
Rodino
Roe
Roemer
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Savage
Saxton
Schaefer
Scheuer
Schneider
Schroeder
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Schulze
Schumer
Seiberling
Sensenbrenner
Sharp
Shaw
Shelby
Shuster
Sikorski
Siljander
Sisisky
Skeen
Skelton
Slattery
Slaughter
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Snyder
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stokes
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Stratton
Studds
Sundquist
Sweeney
Swift
Swindall
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vander Jagt
Vento
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Wirth
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Wolf
Wolpe
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Wylie
Yates
Yatron
Young (FL)
Young (MO)
Zschau

NAYS—33

Archer
Armey
Badham
Bartlett
Barton
Boulter
Burton (IN)
Callahan
Cheney
Combest
Crane
DeLay
Dornan (CA)
Eckert (NY)
Edwards (OK)
Emerson
Franklin
Hartnett
Hunter
Leath (TX)
Loeffler
Lott
Marlenee
Montgomery
Nielson
Olin
Roberts
Rudd
Shumway
Stenholm
Stump
Thomas (CA)
Young (AK)

NOT VOTING—10

Brooks
Chappie
Hillis
McKinney
Miller (OH)
Nelson
Price
Walgren
Weber
Whitten

□ 1930

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. DINGELL. Mr. Speaker, Pursuant to the provisions of House Resolution 331 I move to take from the Speaker's table the bill H.R. 2005, with the Senate amendments thereto, and agree to the Senate amendments to the text and the title with amendments inserting in lieu thereof the texts of H.R. 2817 as passed by the House and its title respectively. I would further move that the House insist on its amendments to H.R. 2005 as amended by the Senate and that the House request a conference with the Senate thereon.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. HATCHER). Pursuant to House Resolution 331, the amendments are considered as having been read.

The text of the Senate amendments is as follows:

Strike out all after the enacting clause and insert:

[NOTE.- H.R. 2005, as passed by the Senate, is previously reproduced and may be found at p. 1311, Vol.2]

The text of the House amendments to the Senate amendments is as follows:

In lieu of the matter proposed to be inserted by the Senate, insert:

[NOTE.- H.R. 2005, as passed by the House, is reproduced in this Chapter at p. 4360.]

The question is on the motion offered by the gentleman from Michigan [Mr. DINGELL].

The motion was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. The conferees will be appointed by the Speaker tomorrow.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF HOUSE AMENDMENTS TO SENATE AMENDMENTS TO H.R. 2005

Mr. DINGELL. Mr. Speaker, I ask unanimous consent that in the engrossment of the House amendments to the Senate amendments to H.R. 2005 the clerk be authorized to make changes in punctuation, cross-references, section numbers and other technical corrections to reflect actions taken by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

GENERAL LEAVE

Mr. DINGELL. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks on H.R. 2817, the Superfund Amendments of 1985, just passed by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

[NOTE.- The following excerpt from debate appeared in the Congressional Record on Dec. 11, 1985 at pp. E5555-E5556.]

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 2817) to amend the Comprehensive Environmental Response Compensation, and Liability Act of 1980, and for other purposes.

Mr. GAYDOS. Mr. Chairman, H.R. 2817, the Superfund Amendments of 1985, may well be one of the most significant pieces of legislation to pass the Congress this year. It provides us with a structure for continuing and, perhaps speeding, the cleanup of several thousand sites where toxic and hazardous materials have been stored and buried.

The compromise package achieves a great deal and I urge my colleagues to support it. And, while I support the entire bill, I would like to focus on one specific issue addressed in it: worker protection standards.

The bill requires the Secretary of Labor to issue health and safety standards focusing on training, medical surveillance, protective equipment, exposure limits and engineering controls in order to safeguard those workers involved in the actual cleanup activities.

This is a vital addition to the Superfund legislation. In May of this year, the Subcommittee on Health and Safety conducted a hearing into this matter. It was clear from testimony presented to the Subcommittee by witnesses from the Environmental Protection Agency, the Occupational Safety and Health Administration [OSHA], and the International Union of Operating Engineers, that OSHA has failed to provide adequate safeguards for those workers who are being exposed to all kinds of toxic and hazardous materials during the cleanup process.

OSHA admitted that it saw little need for more than simple modification of general construction standards to protect those workers at Superfund sites. As a result of OSHA's failure to better protect workers, testimony showed that workers were permitted on Superfund sites wearing little more than everday work clothes, boots, gloves and, perhaps, a hard hat.

By contrast, EPA has much more stringent requirements for its employees who are onsite—requiring the wearing of moon suits, self-contained breathing apparatus and other gear.

In addition, since OSHA inspectors at Superfund cleanup sites fall under EPA requirements, those OSHA inspectors must comply with EPA standards for personal protection—considerably more stringent than the standards OSHA applies to those men and women who are most likely to be exposed to a substance during the actual cleanup process.

The EPA believes that some of the substances at Superfund sites are so toxic that anything less than full protection is merely an invitation to disease and possibly death. Further, EPA witnesses said that not all substances at Superfund sites have been identified and, given that circumstance, it is better to be overly cautious.

The EPA, unfortunately, does not have jurisdiction over the health and safety of workers. That is an OSHA responsibility and it is clear from the testimony presented to the Subcommittee on Health and Safety that OSHA isn't doing all that it should with regard to workers at Superfund cleanup sites.

My support of this section of H.R. 2817 does not in any sense imply that the Committee on Education and Labor and the Subcommittee on Health and Safety is not exercising its exclusive jurisdiction in this area. In an effort to assist in the movement of this bill and, most importantly, because the Subcommittee has had hearings on the issue of worker protection at Superfund site cleanup, Mr. HAWKINS, chairman of the full Committee, and I agreed not to ask for a sequential referral on the bill.

In fact, if this section had not been included as part of H.R. 2817, I was prepared to offer it as an amendment to the bill because of its importance to workers.

But it is a part of the bill and it is a major step forward in ensuring that those workers handling and being exposed to toxic and hazardous substances at Superfund sites be offered every possible safeguard.

[NOTE.- The following excerpt from debate appeared in the Congressional Record on Dec. 12, 1985 at pp. E5586-E5587.]

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 2817) to amend the Comprehensive Environmental Response Compensation, and Liability Act of 1980, and for other purposes.

Mr. GILMAN. Mr. Chairman, I rise in strong support of H.R. 2817, the Superfund Amendments of 1985. This bill represents the hard work and the cooperation of the five committees of jurisdiction, each of which contributed significantly to its formulation. As a cosponsor of this important piece of legislation, I thank and commend each of the members of those five committees because they worked in a bipartisan fashion to produce a thorough and comprehensive measure that addresses the urgent need to clean up our abandoned hazardous waste sites.

In response to the discovery of contamination in the Love Canal area of Niagara Falls, NY, in the late 1970's, Congress created a major Federal program in 1980 to clean up the worst abandoned hazardous waste sites; $1.6 billion was set aside for the Hazardous Waste Response Trust Fund, or Superfund. The law requires the Environmental Protection Agency to determine the most dangerous sites and gives it power to force those responsible to clean them. When such action would not be fast enough, the EPA can use Superfund money to clean up the sites and sue later to recover the money from responsible parties.

In the 5 intervening years since the enactment of Superfund, we have become acutely aware of the enormity of the hazardous waste problem. The EPA has put 541 sites on the National Priorities List—a list of the Nation's most dangerous abandoned waste sites, "the dirtiest of the dirty"—and has proposed inclusion of another 309 sites. To date, the EPA has only completed clean up work at 13 sites. The EPA estimates that between 1,500 and 2,500 abandoned hazardous waste sites will require Federal cleanup and that up to $22.7 billion will be needed to complete the job. Our experience to date with hazardous waste management is reflected in H.R. 2817, which sets the level of funding for Superfund for the next 5 years at $10 billion. This appropriation represents more than a sixfold increase than that which was appropriated for the 1980-85 program years.

This bill contains many of the same provisions of last year's Superfund bill, a bill which I also cosponsored and which the House adopted by an overwhelming margin. Unfortunately, the other chamber did not act on that Superfund bill before adjournment, and it is necessary for Congress to readdress this troubling issue. Since the 1980 authorization for Superfund expired on September 30 of this year, it is of the utmost importance that this legislation be enacted into law in order to stave off health threats of disastrous proportions.

In light of the slow progress made by the EPA thus far in cleaning up hazardous waste sites, H.R. 2817 sets a timetable by which to begin cleanup of those sites. The EPA is required to commence cleanup construction work at no fewer than 600 sites between fiscal years 1986 and 1990. National uniform cleanup standards are established by the bill, and the EPA is required to select permanent cleanup solutions to the maximum extent practicable. Where a permanent cleanup solution is not provided, the EPA must periodically review that site to determine whether the temporary cleanup is adequately protecting the public health and the environment.

Another significant provision of H.R. 2817 is the establishment of a program to provide for cleanup of leaking underground storage tanks. Such tanks pose a grave threat to the quality of our drinking water. Once the waste from these storage tanks infiltrates the water table, it is virtually impossible to prevent it from contaminating our water supplies. The EPA is authorized to undertake corrective action for leaking underground storage tanks or require the responsible party to act. If the EPA takes action, it is permitted to recover the costs of the corrective action from the owners or operators of the storage tanks.

This legislation also establishes a new trust fund to provide a comprehensive system of liability and compensation for damage caused by oil pollution, particularly oil spills. The trust fund will provide payment for costs of cleaning up oil spills, with up to $200 million available for any single accident. While New York State already has established such a fund, I am pleased that this legislation will have a fund to cover all 50 States.

H.R. 2817 again breaks new legislative ground by dealing with a new and potentially deadly environmental problem that only recently has come to the attention of Congress. High concentrations of radioactive radon gas have been discovered along the Reading Prong, a geological formation that runs through parts of New York, New Jersey, Pennsylvania, and Connecticut. I am deeply concerned about this problem because it affects some of my own constituents in Orange County, NY. Numerous cases of lung cancer have been attributed to the natural emission of radon gas, and questions remain as to other long-term effects of exposure to this dangerous gas. As a cosponsor of several bills which are concerned with the radon gas problem, I am pleased that H.R. 2817 takes the first Federal steps to correct this health hazard. The bill provides funding for radon gas research along the Reading Prong area as part of a national assessment of the problem. This research is to lead to Federal recommendations of methods to remediate radon contamination.

I fully support all of these major provisions of the bill, and while I commend the committees for their work on the right-to-know provisions of H.R. 2817, I plan to support the Edgar amendment. As the bill is currently worded, facilities are required to immediately notify State and local emergency officials when a release causing a hazardous substances emergency occurs. The Edgar amendment requires certain companies to report on chemicals that cause chronic health problems, rather than just immediate health problems, and further requires reporting for 403 acutely toxic chemicals which the EPA has listed as part of the acute hazards program. I believe that communities do have a right to know if cancer-causing chemicals are being emitted in their area, and therefore urge my colleagues to join me in support of the Edgar amendment.

H.R. 2817 allows citizens to sue private parties to stop an "imminent and substan-

tial endangerment" caused by releases of hazardous substances. Citizens are also permitted to sue the Federal Government for failure to carry out its mandatory duties as specified under the Superfund law. I am in complete agreement with these provisions, and will seek to strengthen the rights of citizens by supporting the Frank amendment. Representative FRANK's amendment will permit people who suffer personal injury or economic loss due to a hazardous substance release the right to sue for medical costs and damages in Federal as well as State courts. For much the same reasons I am supporting the Frank amendment and oppose the Daub amendment which would weaken the liability amendments of this bill.

As a member of the New York congressional delegation, I am particularly concerned that this bill be adopted because New York has 29 sites listed on the National Priorities List, with 30 more that have been proposed to be placed on the list. H.R. 2817 will continue and expand Federal efforts, which are so desperately needed, to clean up hazardous waste sites. Such sites present serious threats, both in the long and short runs, to the health and welfare of the citizens of this country. Accordingly, I urge my colleagues to join in support of this bill and vote for its adoption.

[NOTE.- The following excerpt from debate appeared in the Congressional Record on Dec. 16, 1985 at p. E5658.]

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 2817) to amend the Comprehensive Environmental Response Compensation, and Liability Act of 1980 and for other purposes.

Mr. YOUNG of Missouri. Mr. Chairman, I rise in strong support of H.R. 2817, legislation to reauthorize the Superfund Program to clean up hazardous waste sites. I have participated in the debate over Superfund as a member of the Committee on Public Works and Transportation and as a Member of Congress with hazardous waste sites in my district, including Times Beach.

I want to congratulate the leadership of the Committees on Public Works and Transportation and Energy and Commerce for their fine efforts in producing a strong Superfund bill. Both committees have spent many hours in hearings and debates on this vital issue, and I believe that the final product of their deliberations represents a great improvement to the Superfund Program and legislation which can and will be supported by Members of the House of Representatives.

In the 5 years since Congress created Superfund, we have learned a great deal about the nature, extent and pervasiveness of the hazardous waste problem. We have learned much more about the complexity of the hazards at waste sites, and we now know that rather than a few sites that can be cleaned up quickly, we have a vast number of sites scattered across the Nation. We understand that each site has unique characteristics that must be taken into consideration in planning each cleanup. We know that the answers are not simple, and they will not be inexpensive. The challenge we have faced is to incorporate all of these lessons into legislation which will create a balanced, effective program that does the best possible job of protecting the health and welfare of our communities. The Pulbic Works-Energy and Commerce bill meets that challenge.

The bill provides a mandatory but reasonable schedule for the Environmental Protection Agency to clean up waste sites. It is a schedule that can be met, and which will assure our communities that their waste problems will be addressed carefully and within a reasonable period of time. It imposes standards for cleanup which will ensure that the requirements of current laws which protect the environment are met. It ensures that citizens will receive information about the hazardous substances in their communities and that they will have the right to sue if the law is violated or if they face imminent danger from leaking waste sites. I am particularly pleased that the strong community right to know provisions which I supported in the Public Works Committee are included in the compromise bill.

This legislation strongly encourages the permanent cleanup which must be the final answer to the hazardous waste problem—destruction or immobilization of waste whenever technically feasible. Where responsible parties can be identified, they will be encouraged to accept responsibility and contribute their fair shares to the costs of cleanup. Most important, our legislation ensures that the communities affected by hazardous waste sites are involved in cleanup plans and have an opportunity to express their views. I am convinced that the understanding and support of communities are vital to the success of cleanups.

As taxpayers, producers and consumers, all of us have a stake in the proper disposal and cleanup of hazardous waste, whether or not we are directly affected by waste sites. I believe that this legislation will produce a strong, effective program, and I urge its support.

In the House of Representatives, U. S.,

December 10, 1985.

Resolved, That the House agree to the amendments of the Senate to the bill (H.R. 2005) entitled "An Act to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes", with the following

AMENDMENTS:

In lieu of the matter inserted by the amendment of the Senate to the text of the bill, insert:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Superfund Amendments of 1985".

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Sec. 1. Short title and table of contents.
Sec. 2. CERCLA and Administrator.
Sec. 3. Limitation on contract and borrowing authority.

TITLE I—PROVISIONS RELATING PRIMARILY TO RESPONSE AND LIABILITY

Sec. 101. Amendments to CERCLA definitions.
Sec. 102. Reportable quantities.
Sec. 103. Notices; penalties.
Sec. 104. Response authorities.
Sec. 105. National contingency plan.
Sec. 106. Abatement actions.
Sec. 107. Liability.
Sec. 108. Financial responsibility.
Sec. 109. Penalties.
Sec. 110. Section 110.
Sec. 111. Uses of Fund.
Sec. 112. Claims procedure.
Sec. 113. Litigation, jurisdiction, and venue.
Sec. 114. Relationship to other law.
Sec. 115. Delegation of functions.

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Sec. 116. Public health assessment and protection authorities.
Sec. 117. Public participation.
Sec. 118. Miscellaneous provisions.
Sec. 119. Response action contractors.
Sec. 120. Federal facilities.
Sec. 121. Cleanup standards.
Sec. 122. Settlements.
Sec. 123. Reimbursement to local governments.
Sec. 124. Landfill gas operators.
Sec. 125. Section 3001(b)(3)(A)(i) waste.
Sec. 126. Worker protection standards.
Sec. 127. Liability limits for ocean incineration vessels.

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Sec. 202. Transportation of hazardous materials.
Sec. 203. State procedural reform.
Sec. 204. Conforming amendment to funding provisions.
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Sec. 302. Comprehensive emergency response plans.

Subtitle B—Notification Requirements

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Sec. 400. Short title.

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Sec. 407. Claims settlement.
Sec. 408. Subrogation.
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Subtitle B—Report and Coordination With Other Provisions

Sec. 421. Annual report.
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PART V—COORDINATION WITH OTHER PROVISIONS OF THIS ACT

Sec. 551. Coordination.

SEC. 2. CERCLA AND ADMINISTRATOR.

As used in this Act—

(1) CERCLA.—The term "CERCLA" refers to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (52 U.S.C. 9601 et seq.).

(2) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

SEC. 3. LIMITATION ON CONTRACT AND BORROWING AUTHORITY.

Any authority provided by this Act, including any amendment made by this Act, to enter into contracts to obligate the United States or to incur indebtedness for the repayment of which the United States is liable shall be effec-

tive only to such extent or in such amounts as are provided in appropriation Acts.

TITLE I—PROVISIONS RELATING PRIMARILY TO RESPONSE AND LIABILITY

SEC. 101. AMENDMENTS TO CERCLA DEFINITIONS.

(a) USE OF TERM "PRESIDENT".—

(1) ADMINISTRATOR.—CERCLA is amended by striking out "President" each place it appears (except in subsections (e)(2) and (f) of section 301 and section 307(b)) and inserting in lieu thereof "Administrator".

(2) DEFINITION.—Section 101(2) of CERCLA (defining the term "Administrator") is amended by inserting before the semicolon at the end thereof the following: ", except as provided in subsection (b)".

(3) DELEGATIONS OF AUTHORITY.—Section 101 of CERCLA is amended by inserting "(a) IN GENERAL.—" after "101." and by adding a the end thereof the following new subsection:

"(b) USE OF TERM 'ADMINISTRATOR'.—

"(1) DELEGATIONS RETAINED.—Where, before the date of the enactment of the Superfund Amendments of 1985, any authority under this Act was delegated to the head of any other department, agency, or instrumentality of the United States (or where any such authority has been retained by the President), the

term 'Administrator' refers to the head of such department, agency, or instrumentality (or to the President in the case of an authority retained by the President).

"(2) EXCEPTION FOR FEDERAL FACILITIES.—Paragraph (1) shall not apply to any authority delegated to a department, agency, or instrumentality with respect to any facility owned or operated by that department, agency, or instrumentality. With respect to such facilities, the term 'Administrator' when used in this Act refers to the Administrator of the Environmental Protection Agency.".

(b) HAZARDOUS SUBSTANCE.—Section 101(a)(14)(C) of CERCLA is amended by inserting after "Congress" the following: "and not including used oil that is listed or identified as a hazardous waste under the Solid Waste Disposal Act if such used oil (i) is treated, managed, or recycled in such a way as to remove or render harmless the hazardous constituents contained in such used oil or such used oil does not contain hazardous constituents, and (ii) such used oil is in compliance with a final rule promulgated by the Administrator, which rule shall authorize the Administrator to order any corrective action necessary for any release of used oil.

(c) RELEASE.—Section 101(22) of CERCLA is amended by inserting after "environment" the following:

"(including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant)".

(d) Remedial Action.—Section 101(24) of CERCLA (relating to the definition of "remedy" or "remedial action") is amended—

(1) by striking out "welfare. The term does not include offsite transport" and all that follows down through the semicolon at the end of such paragraph and inserting in lieu thereof "welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials;"; and

(2) by striking out "or" before "contaminated materials" and inserting in lieu thereof "and associated".

(e) Response.—Section 101(25) of CERCLA is amended by striking out "and" and by inserting before the semicolon at the end thereof the following: ", and enforcement activities related thereto".

(f) State.—Section 101(a)(27) of CERCLA is amended by inserting before the semicolon at the end thereof the following: "; the term 'State' as used in sections 107(a)(4)(A) and 107(f) does not include a municipality or other political subdivision of a State".

(g) Pollutant or Contaminant.—

(1) Definition.—Section 101 of CERCLA is amended by striking out "and" at the end of paragraph (31), by striking out the period at the end of paragraph (32) and inserting in lieu thereof "; and" and by adding the following new paragraph at the end thereof:

"(33) 'pollutant or contaminant' shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring; except that the term 'pollutant or contaminant' shall not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) and shall not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).".

(2) C*ONFORMING AMENDMENT.—Section 104(a) of CERCLA is amended by striking out paragraph (2).*

(h) F*EDERALLY* L*ICENSED* D*AMS.—Section 101(a)(20) of CERCLA is amended by adding the following at the end thereof:*

"(D) in the case of a hazardous substance, pollutant, or contaminant which—

"(i) has been released into the environment upstream of a dam which is licensed under part 1 of the Federal Power Act; and

"(ii) has subsequently come to be located in the reservoir created by such dam;

the term 'owner or operator' does not include the owner or operator of the dam unless such owner or operator is a person who would otherwise be liable for such release or threatened release under section 107.

SEC. 102. REPORTABLE QUANTITIES.

Section 102(a) of CERCLA is amended by adding the following new sentence at the end thereof: "The Administrator shall promulgate regulations establishing such reportable quantities for all hazardous substances by December 31, 1986.".

SEC. 103. NOTICES; PENALTIES.

Section 103(b) of CERCLA is amended by striking out "paragraph" in the last sentence and inserting in lieu thereof "subsection" and by adjusting the left hand margin of the text of such subsection following "federally permitted release," the third place it appears so that there is no indentation of such text.

SEC. 104. RESPONSE AUTHORITIES.

(a) PUBLIC HEALTH THREATS.—Section 104(a)(1) of CERCLA is amended by adding the following at the end thereof: "The Administrator shall give primary attention to those releases which he deems may present a public health threat.".

(b) RESPONSE BY POTENTIALLY RESPONSIBLE PERSONS.—Section 104(a)(1) of CERCLA is amended by striking out ", unless the President determines" and all that follows down through "party." and inserting in lieu thereof a period and the following: "When the Administrator determines that such removal and remedial action will be done properly and promptly by the owner or operator of the facility from which the release or threat of release emanates, or by any other responsible party, the Administrator may allow such owner or operator or party to carry out the removal or remedial action in accordance with section 122. The Administrator may permit the owner or operator of the facility from which the release or threat of release emanates,

or any other responsible party, to conduct a remedial investigation to determine the nature and extent of the problem presented by the release or threat of release or a feasibility study of alternatives to remedy the problem presented by the release or threat of release only if the person conducting such investigation or study for the responsible party is qualified to conduct such investigation or study and is approved by the Administrator, if the Administrator enters into a contract with any qualified [illegible] person to oversee and review the conducting of such investigation or study, and if the responsible party agrees to reimburse the Fund for any cost incurred by the Administrator under the oversight contract.".

(c) REMOVAL ACTION.—Section 104(a) of CERCLA is amended by adding at the end the following new paragraph:

"(2) REMOVAL ACTION.—Any removal action undertaken by the Administrator under this subsection (or by any other person referred to in section 122) shall contribute to the efficient performance of any long term remedial action to the maximum extent practicable with respect to the release or threatened release concerned.".

(d) COORDINATING OF INVESTIGATIONS.—Section 104(b) of CERCLA is amended by inserting "(1)" after

"(b)" and by adding the following new paragraph at the end:

"(2) The Administrator shall promptly notify the appropriate Federal and State natural resource trustees of potential damages to natural resources resulting from releases under investigation pursuant to this section and shall seek to coordinate the assessments, investigations, and planning under this section with such Federal and State trustees."

(e) INITIAL OBLIGATION OF FUND.—

(1) LIMITATION.—Section 104(c)(1) of CERCLA is amended by striking out "$1,000,000" and "six months" and inserting in lieu thereof "$2,000,000" and "12 months", respectively.

(2) CONTINUED RESPONSE.—Section 104(c)(1) of CERCLA is amended by inserting before "obligations" the following: "or (C) continued response action is otherwise appropriate and consistent with the remedial action to be taken,".

(f) FACILITIES OWNED AND OPERATED BY STATES.—

(1) IN GENERAL.—Paragraph (3) of section 104(c) of CERCLA is amended—

(A) by striking out "and (C)" and inserting in lieu thereof "(C) the State will assure the availability of hazardous waste treatment or dis-

posal facilities which (i) have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed, (ii) are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority, (iii) are acceptable to the Administrator, and (iv) are in compliance with the requirements of subtitle C of the Solid Waste Disposal Act; and (D)"; and

(B) by striking out the last sentence.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) of this subsection shall take effect on the date of the enactment of this Act, except that the amendment made by paragraph (1)(A) shall take effect three years after such date of enactment.

(g) STATE CREDITS.—Section 104(c) of CERCLA is amended by inserting the following new paragraph after paragraph (3) and by redesignating paragraph (4) as paragraph (5):

"(4) STATE CREDITS.—

"(A) GRANTING OF CREDIT.—The Administrator shall grant a State a credit against the share of the costs, for which it is responsible under paragraph (3) with respect to a facility listed on the National Priorities List under the National Contingency Plan, for amounts expended by a State for remedial action at such facility pursuant to a contract or cooperative agreement with the Administrator. The credit under this paragraph shall be limited to those State expenses which the Administrator determines to be reasonable, documented, direct out-of-pocket expenditures of non-Federal funds.

"(B) EXPENSES BEFORE LISTING OR AGREEMENT.—The credit under this paragraph shall include expenses for remedial action at a facility incurred before the listing of the facility on the National Priorities List or before a contract or cooperative agreement is entered into under subsection (d) for the facility if—

"(i) after such expenses are incurred the facility is listed on such list and a contract or cooperative agreement is entered into for the facility, and

"(ii) the Administrator determines that such expenses would have been credited to the State under subparagraph (A) had the expenditures

been made after listing of the facility on such list and after the date on which such contract or cooperative agreement is entered into.

"(C) ADMINISTRATIVE EXPENSES.—The credit under this paragraph shall include amounts expended or obligated by the State or political subdivision for administration of this Act. The Administrator shall promulgate such rules as may be necessary to implement this subparagraph.

"(D) RESPONSE ACTIONS BETWEEN 1978 AND 1980.—The credit under this paragraph shall include funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 111.

"(E) STATE EXPENSES AFTER DEC. 11, 1980, IN EXCESS OF 10 PERCENT OF COSTS.—The credit under this paragraph shall include 90 percent of State expenses incurred at a facility owned, but not operated, by such State or by a political subdivision thereof. Such credit applies only to expenses incurred pursuant to a contract or cooperative agreement under subsection (d) and only to expenses incurred after December 11,

1980, but before the date of the enactment of this paragraph.

"(F) ITEM-BY-ITEM APPROVAL.—In the case of expenditures made after the date of the enactment of this paragraph, the Administrator may require prior approval of each item of expenditure as a condition of granting a credit under this paragraph.

"(G) USE OF CREDITS.—Credits granted under this paragraph for funds expended with respect to a facility may be used by the State to reduce all or part of the share of costs otherwise required to be paid by the State under paragraph (3) in connection with remedial actions at such facility. If the amount of funds for which credit is allowed under this paragraph exceeds such share of costs for such facility, the State may use the amount of such excess to reduce all or part of the share of such costs at other facilities in that State. A credit shall not entitle the State to any direct payment.".

(h) CROSS REFERENCE TO CLEANUP STANDARDS.—Section 104(c)(5) of CERCLA, as redesignated by subsection (g) of this section, is amended to read as follows:

"(5) SELECTION OF REMEDIAL ACTION.—The Administrator shall select the remedial actions to carry out this

section in accordance with section 121 of this Act (relating to cleanup standards).".

(i) TREATMENT OF CERTAIN ACTIVITIES AS MAINTENANCE OR REMEDIAL ACTION.—Section 104(c) of CERCLA is amended by adding the following new paragraph after paragraph (5):

"(6) OPERATION AND MAINTENANCE.—For the purposes of paragraph (3) of this subsection, in the case of groundwater or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore groundwater and surface water quality to a level that assures protection of human health and the environment. Activities required to maintain the effectiveness of such measures following the completion of remedial action shall be considered maintenance.".

(j) COOPERATIVE AGREEMENTS WITH STATES.—Section 104(d) of CERCLA is amended by inserting "COOPERATIVE AGREEMENTS WITH STATES.—" after "(d)" and by amending paragraph (1) to read as follows:

"(1) IN GENERAL.—

"(A) STATE APPLICATIONS.—A State or political subdivision thereof may apply to the Administrator to carry out actions authorized in this section. If the Administrator determines that the

State or political subdivision has the capability to carry out any or all of such actions in accordance with the criteria and priorities established pursuant to section 105(a)(8) and to carry out related enforcement actions, the Administrator may enter into a contract or cooperative agreement with the State or political subdivision to carry out such actions. The Administrator shall make a determination regarding such an application within 90 days after the Administrator receives the application.

"(B) TERMS AND CONDITIONS.—A contract or cooperative agreement under this paragraph shall be subject to such terms and conditions as the Administrator may prescribe. The contract or cooperative agreement may cover a specific facility or specific facilities.

"(C) REIMBURSEMENTS.—Any State which expended funds during the period beginning September 30, 1985, and ending on the date of the enactment of this subparagraph for response actions at any site included on the National Priorities List and subject to a cooperative agreement under this Act shall be reimbursed for the share of costs of such actions for which the Federal Government is responsible under this Act.".

(k) INFORMATION GATHERING AND ACCESS AUTHORITIES.—Section 104(e) of CERCLA is amended by redesignating paragraph (2) as paragraph (8) and aligning such paragraph with paragraphs (1) through (7) of such section, by inserting "CONFIDENTIALITY OF INFORMATION.—" before "(A) Any records", by striking out paragraph (1), and by striking out "(e)" and inserting in lieu thereof the following:

"(e) INFORMATION GATHERING AND ACCESS.—

"(1) ACTION AUTHORIZED.—Any officer, employee, or representative of the Administrator, duly designated by the Administrator, is authorized to take action under paragraph (2), (3), or (4) (or any combination thereof) at a vessel, facility, establishment, place, property, or location or, in the case of paragraph (3) or (4), at any vessel, facility, establishment, place, property, or location which is adjacent to the facility, establishment, place, property, or location referred to in such paragraph (3) or (4). Any duly designated officer, employee, or representative of a State under a contract or cooperative agreement under subsection (d)(1) is also authorized to take such action. The authority of paragraphs (3) and (4) may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollut-

ant or contaminant. The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this title.

"(2) ACCESS TO INFORMATION.—Any officer, employee, or representative described in paragraph (1) may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

"(A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.

"(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.

"(C) Information relating to the ability of a person to pay for or to perform a cleanup.

In addition, upon reasonable notice, such person either shall grant any such officer, employee, or representative access at all reasonable times to any vessel, facility, establishment, place, property, or location to inspect *or copy all documents or records relating to such matters copy and furnish to the officer, employee, or representative all such documents or records, at the option and expense of such person.*

"(3) ENTRY.—Any officer, employee, or representative described in paragraph (1) is authorized to enter at reasonable times any of the following:

"(A) Any vessel, facility, establishment, or other place or property where any hazardous substance or pollutant or contaminant, may be, or has been generated, stored, treated, disposed of, or transported from.

"(B) Any vessel, facility, establishment, or other place or property from which or to which a hazardous substance or pollutant or contaminant has been or may have been released.

"(C) Any vessel, facility, establishment, or other place or property where such release is or may be threatened.

"(D) Any vessel, facility, establishment, or other place or property where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this title.

"(4) INSPECTION AND SAMPLES.—

"(A) AUTHORITY.—Any officer, employee or representative described in paragraph (1) is authorized to inspect and obtain samples from any vessel, facility, establishment, or other place or property referred to in paragraph (3) or from any location of any suspected hazardous substance or pollutant or contaminant. Any such officer, employee, or representative is authorized to inspect and obtain samples of any containers or labeling for suspected hazardous substances or pollutant or contaminants. Each such inspection shall be completed with reasonable promptness.

"(B) SAMPLES.—If the officer, employee, or representative obtains any samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

"(5) COMPLIANCE ORDERS.—

"(A) ISSUANCE.—If consent is not granted regarding any request made by an officer, employee, or representative under paragraph (2), (3), or (4), the Administrator may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

"(B) COMPLIANCE.—The Administrator may ask the Attorney General to commence a civil action to compel compliance with a request or order referred to in subparagraph (A). Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, the court shall take the following actions:

"(i) In the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection.

"(ii) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compli-

ance with the requests or orders to provide such information or documents.

The court may assess a civil penalty not to exceed $25,000 for each day of noncompliance against any person who unreasonably fails to comply with the provisions of paragraph (2), (3), or (4) or an order issued pursuant to subparagraph (A) of this paragraph.

"(6) OTHER AUTHORITY.—Nothing in this subsection shall preclude the Administrator from securing access or obtaining information in any other lawful manner.

"(7) CLEARANCE.—Notwithstanding this subsection, entry to locations and access to information properly classified to protect the national security may be granted only to any officer, employee, or representative of the Administrator who is properly cleared.".

(l) REPEAL OF SECTION 104(i).—Section 104(i) of CERCLA is repealed. For related provisions, see section 116 of this Act.

(m) MANDATORY SCHEDULE.—Section 104 of CERCLA is amended by adding the following at the end thereof:

"(i) MANDATORY SCHEDULE.—

"(1) LISTING OF FACILITIES ON NPL.—The Administrator shall list not fewer than 1,600 facilities on the National Priorities List by January 1, 1988.

"(2) COMMENCEMENT OF RIFS.—The Administrator shall ensure commencement of remedial investigations and feasibility studies for all facilities listed on the National Priorities List in accordance with the following schedule:

"(A) 150 facilities during the first 12-month period after the date of the enactment of this subsection.

"(B) 175 facilities during the second 12-month period after such date.

"(C) 200 facilities during each 12-month period thereafter.

"(3) COMMENCEMENT OF REMEDIAL ACTION.—The Administrator shall take such steps as may be necessary to ensure that substantial and continuous physical on-site remedial action commences at facilities on the National Priorities List at a rate of not fewer than—

"(A) 125 facilities during the fiscal year beginning on October 1, 1986;

"(B) 140 facilities during the fiscal year beginning on October 1, 1987;

"(C) 160 facilities during the fiscal year beginning on October 1, 1988; and

"(D) 175 facilities during the fiscal year beginning on October 1, 1989.

"(4) COMPLETION OF PRELIMINARY ASSESSMENTS.—Not later than January 1, 1987, the Administrator shall complete preliminary assessments of all facilities which are listed, as of the date of the enactment of the Superfund Amendments of 1985, on the Comprehensive Environmental Response, Compensation, and Liability Information System list. Each preliminary assessment shall include a statement as to whether a site inspection is necessary and by whom it should be carried out.

"(5) COMPLETION OF SITE INSPECTIONS.—Not later than January 1, 1988, the Administrator shall complete site inspections at all facilities for which the Administrator has stated under paragraph (4) that a site inspection was necessary.

"(6) COMPLETION OF REMEDIAL ACTION AT EXISTING NPL FACILITIES.—The Administrator shall take such steps as may be necessary to ensure that remedial action is completed, to the maximum extent practicable, for all facilities listed on the National Priorities List, as of the date of the enactment of the Su-

perfund Amendments of 1985, within five years after such date of enactment. If remedial action is not completed at such facilities within such five-year period, the Administrator shall publish an explanation of why such remedial action could not be completed within such period.".

(n) ACQUISITION OF PROPERTY.—Section 104 of CERCLA is amended by adding the following new subsection at the end thereof:

"(j) ACQUISITION OF PROPERTY.—

"(1) AUTHORITY.—The Administrator is authorized to acquire, by purchase, lease, condemnation, donation, or otherwise, any real property or any interest in real property that the Administrator in his discretion determines is needed to conduct a remedial action under this Act. There shall be no cause of action to compel the Administrator to acquire any interest in real property under this Act.

"(2) STATE ASSURANCE.—The Administrator may use the authority of paragraph (1) for a remedial action only if, before an interest in real estate is acquired under this subsection, the State in which the interest to be acquired is located assures the Administrator, through a contract or cooperative agreement or oth-

erwise, that the State will accept transfer of the interest following completion of the remedial action.

"(3) EXEMPTION.—No Federal, State, or local government agency shall be liable under this Act solely as a result of acquiring an interest in real estate under this subsection.".

SEC. 105. NATIONAL CONTINGENCY PLAN.

(a) REVISION OF PLAN.—

(1) AMENDMENTS MADE BY THIS ACT.—Not later than 18 months after the enactment of this Act, the Administrator shall revise the National Contingency Plan (NCP) referred to in section 105 of CERCLA in order to reflect the amendments made by this Act.

(2) NEW RESPONSE ACTIONS.—Any provision of the NCP adopted pursuant to any other provision of law which is inconsistent with the requirements of the amendments made by this Act shall not apply to response actions commenced, after the enactment of this Act, under CERCLA.

(3) HAZARD RANKING SYSTEM.—

(A) REVIEW OF HAZARD RANKING SYSTEM.—Not later than 12 months after the enactment of this Act and after publication of notice and opportunity for submission of comments in

accordance with section 553 of title 5, United States Code, the Administrator shall commence a proceeding to review the hazard ranking system in effect under the NCP. Such review shall assure, to the maximum extent feasible, that the hazard ranking system appropriately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review.

(B) HEALTH ASSESSMENT OF WATER CONTAMINATION RISKS.—In conducting the review under this paragraph, the Administrator shall ensure that the human health risks associated with the contamination or potential contamination of surface water, either directly or as a result of the runoff of any hazardous substance or pollutant or contaminant from sites or facilities subject to review, which are, or can be, used for recreation or potable water consumption, are appropriately assessed. In making the assessment required pursuant to the preceding sentence, the Administrator shall take into account the potential migration of any hazardous substance or pollutant or contaminant through such surface water to downstream sources of drinking water.

(C) COMPARISON WITH PRELIMINARY POLLUTANT LIMIT VALUE SYSTEM.—In conducting the review under this paragraph, the Administrator shall evaluate the preliminary pollutant limit value system used by the Department of Defense to assess the risks of hazardous substances and compare such system with the hazard ranking system. In particular, the Administrator shall study the effectiveness of each system in appropriately assessing the relative degree of risk to human health and the environment posed by facilities subject to each such system.

(D) CONTENTS OF REVIEW.—The review under this paragraph shall include—

(i) an explanation of the hazard ranking system, including the manner in which it was developed and the method of determining the relative hazard at different facilities under the system;

(ii) a determination of the relationship between the value determined for a facility under the hazard ranking system and the potential danger to human health and the environment;

(iii) an examination, based on the determination under clause (ii), of the effect of establishing a threshold value of 28.5 for facilities to be included on the National Priorities List;

(iv) a determination, based upon the determination under clause (ii) and the examination under clause (iii), of whether a new threshold value should be established for inclusion of facilities on such list; and

(v) a determination of the relationship between the value determined for a facility under the hazard ranking system and the types of remedial actions that are appropriate at such facility.

(E) REEVALUATION NOT REQUIRED.—The Administrator shall not be required to reevaluate, after the enactment of this Act, the hazard ranking of any facility which was evaluated in accordance with the criteria under section 105 of the CERCLA before such enactment and which was assigned a national priority under the National Contingency Plan.

(F) NEW INFORMATION.—Nothing in subparagraph (E) shall preclude the Administrator

from taking new information into account in undertaking response actions under CERCLA.

(b) PRELIMINARY ASSESSMENT AND EVALUATION.—Section 105 of CERCLA is amended by inserting "(a) REVISION AND REPUBLICATION.—" after "105." and by adding the following new subsection at the end thereof:

"(b) PETITION FOR ASSESSMENT OF RELEASE.—Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant, may petition the Administrator to conduct a preliminary assessment of the hazards to public health and the environment which are associated with such release or threatened release. If the Administrator has not previously conducted a preliminary assessment of such release, the Administrator shall, within 12 months after the receipt of any such petition, complete such assessment or provide an explanation of why the assessment is not appropriate. If the preliminary assessment indicates that the release or threatened release concerned may pose a threat to human health or the environment, the Administrator shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in paragraph (8)(A) of subsection (a) to determine the national priority of such release or threatened release.".

(c) Hazard Ranking System.—Section 105(a)(8)(A) of CERCLA is amended by inserting the following after "ecosystems,": "the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release, the contamination or potential contamination of the ambient air which is associated with the release or threatened release,".

(d) National Priority List.—Subparagraph (B) of section 105(a)(8) of CERCLA is amended as follows:

(1) Strike out "at least four hundred of" when it appears.

(2) Strike out "at least" following the word "facilities" the second time it appears.

(3) Insert "A State shall be allowed to designate its highest priority facility only once." after the third full sentence thereof.

(e) Standards and Procedures for Innovative Treatment Technologies.—Section 105(a) of CERCLA is amended by striking out "and" at the end of paragraph (8), by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; and", and by inserting after paragraph (9) the following new paragraph:

"(10) standards and testing procedures by which alternative or innovative treatment technologies can be

determined to be appropriate for utilization in response actions authorized by this Act.".

(f) RELEASES FROM EARLIER SITES.—Section 105 of CERCLA is amended by adding the following new subsection at the end thereof:

"(c) RELEASES FROM EARLIER SITES.—Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the Administrator as a 'Site Cleaned Up To Date' on the National Priorities List (revised edition, December 1984) the site shall be restored to the National Priorities List, without application of the hazard ranking system.".

(g) MINORITY CONTRACTORS.—(1) Section 105(a)(9) of CERCLA is amended by adding the following after "therefor": "and including consideration of minority firms in accordance with subsection (d)".

(2) Section 105 of CERCLA is amended by adding the following new subsection at the end thereof:

"(d) MINORITY CONTRACTORS.—In awarding contracts under this Act, the Administrator shall consider the availability of qualified minority firms. The Administrator shall describe, as part of any annual report submitted to the Congress under this Act, the participation of minority firms in contracts carried out under this Act. Such report shall

contain a brief description of the contracts which have been awarded to minority firms under this Act and of the efforts made by the Administrator to encourage the participation of such firms in programs carried out under this Act.".

SEC. 106. ABATEMENT ACTIONS.

Section 106 of CERCLA is amended by adding the following new subsection after subsection (c):

"(d) PESTICIDES.—The Administrator shall not take action under this section with respect to any release or threatened release resulting from the normal application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this subsection shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action for such hazardous substance.".

SEC. 107. LIABILITY.

(a) FOREIGN VESSELS.—Section 107(a)(1) of CERCLA is amended by striking out "(otherwise subject to the jurisdiction of the United States)".

(b) COSTS AND DAMAGES.—Section 107(a)(4) of CERCLA is amended as follows:

(1) In subparagraph (A) insert after "not inconsistent with the national contingency plan" the following: "and all costs incurred by the United States Government or a State under section 104(b)".

(2) Strike out "and" at the end of subparagraph (B), strike out the period at the end of subparagraph (C) and insert in lieu thereof "; and", and insert at the end of such section the following:

"(D) the costs of any health assessment or health effects study carried out under section 116.

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from 90 days after the date on which an action for recovery of such amounts is filed. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is applicable to investments of the Fund under section 9602 of the Internal Revenue Code of 1954. For purposes of applying section 9602 of the Internal Revenue Code of 1954, the term 'comparable maturity' shall be determined with reference to the date 90 days after the date of filing of the action for recovery under this section.".

(c) EMERGENCY RESPONSE ACTIONS.—

(1) LIABILITY FOR.—Section 107(d) of CERCLA is amended by striking out "damages" each place it appears and inserting in lieu thereof "costs and damages" and by inserting before the second sentence the following: "This subsection shall not alter the liability of any person who is liable or potentially liable under subsection (a) of this section who subsequently undertakes a response action.".

(2) GOVERNMENTAL RESPONSE TO EMERGENCY.—Such section 107(d) is further amended by inserting "(1) RENDERING CARE OR ADVICE.—" after "(d)" and adding the following new paragraph at the end thereof:

"(2) GOVERNMENTAL RESPONSE TO EMERGENCY.—

"(A) IN GENERAL.—No Federal, State, or local government agency shall be liable under this title for costs and damages resulting from actions taken by the agency in response to an emergency created by the release or threatened release of a hazardous substance, pollutant, or contaminant from a vessel, facility, or site owned by another person. This paragraph shall not affect the liability of any Federal, State or local government agency for negligence.

"(B) PERSONS RETAINED OR HIRED.—Any person retained or hired by a State to take any action

described in subparagraph (A) shall have the same exemption from liability provided to the State under subparagraph (A).".

(d) NATURAL RESOURCES.—

(1) DESIGNATION OF FEDERAL AND STATE OFFICIALS.—Section 107(f) of CERCLA is amended by inserting "(1) NATURAL RESOURCES LIABILITY.—" after "(f)" and by adding at the end thereof the following new paragraphs:

"(2) DESIGNATION OF FEDERAL AND STATE OFFICIALS.—

"(A) FEDERAL.—Each Federal agency designated as a natural resource trustee under the National Contingency Plan published under section 105 of this Act shall assess damages for injury to, destruction of, or loss of natural resources under its trusteeship resulting from a release of hazardous substances for the purposes of this Act and section 311(f)(4) and (5) of the Federal Water Pollution Control Act and may, upon request of and reimbursement from a State, assess damages for those natural resources under the State's trusteeship.

"(B) STATE.—The Governor of each State shall designate the State officials who may act on behalf of the public as trustees for natural resources under this

Act and section 311 of the Federal Water Pollution Control Act and shall notify the Administrator of such designations. Such State officials shall assess damages to natural resources for the purposes of this Act and such section 311 for those resources under their trusteeship.

"(C) REBUTTABLE PRESUMPTION.—Any determination or assessment of damages to natural resources for the purposes of this Act and section 311 of the Federal Water Pollution Control Act made by a Federal or State trustee in accordance with the regulations promulgated under section 301(c) of this Act shall have the force and effect of a rebuttable presumption on behalf of the trustee in any judicial proceeding under this Act or section 311 of the Federal Water Pollution Control Act.".

(2) USE OF RECOVERED FUNDS.—Section 107(f)(1) of CERCLA (as designated by paragraph (1) of this subsection) is amended by striking out the third sentence and inserting in lieu thereof the following: "Sums recovered by the United States Government as trustee under this subsection shall be retained by the Administrator, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a

State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) shall not be limited by the sums which can be used to restore or replace such resources.".

(e) NORMAL APPLICATION OF PESTICIDES.—Section 107(i) of CERCLA is amended by inserting "normal" before "application of a pesticide".

(f) FEDERAL AGENCIES.—Section 107(g) of CERCLA is amended to read as follows:

"(g) Federal Agencies.—For provisions relating to Federal agencies, see section 119 of this Act."

(g) FEDERAL LIEN.—Section 107 of CERCLA is amended by adding at the end thereof the following new subsections:

"(k) FEDERAL LIEN.—

"(1) IN GENERAL.—All costs and damages for which a person is liable to the United States under subsection (a) of this section (other than the owner or operator of a vessel under paragraph (1) of subsection (a)) shall constitute a lien in favor of the United States upon all real property and rights to such property which—

"(A) belong to such person; and

"(B) are subject to or affected by a removal or remedial action.

"(2) DURATION.—The lien imposed by this subsection shall arise at the later of the following:

"(A) The time costs are first incurred by the United States with respect to a response action under this Act.

"(B) The time that the person referred to in paragraph (1) is provided (by certified or registered mail) written notice of his potential liability.

Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113.

"(3) NOTICE AND VALIDITY.—The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is located. Any such purchaser, holder of a security in-

terest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this subsection. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is located. For purposes of this subsection, the terms 'purchaser' and 'security interest' shall have the definitions provided under section 6323(h) of the Internal Revenue Code of 1954.

"(4) ACTION IN REM.—The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.

"(l) MARITIME LIEN.—All costs and damages for which the owner or operator of a vessel is liable under subsection (a)(1) with respect to a release or threatened release

from such vessel shall constitute a maritime lien in favor of the United States on such vessel. Such costs may be recovered in an action in rem in the district court of the United States for the district in which the vessel may be found. Nothing in this subsection shall affect the right of the United States to bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

"(m) LANDOWNER LIABILITY.—There shall be no liability under subsection (a)(1) of this section for a person otherwise liable who can establish by a preponderance of the evidence that he—

"(1) is the owner of the real property on or in which the facility is located;

"(2) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility, the release or threatened release of which causes significant environmental hazards;

"(3) did not contribute to the release or threat of release of a hazardous substance at the facility through any act or omission; and

"(4) did not acquire the property with actual or constructive knowledge that the property was used prior to the acquisition for the generation, transportation,

storage, treatment, or disposal of any hazardous substance.".

SEC. 108. FINANCIAL RESPONSIBILITY.

(a) DEADLINE FOR ISSUANCE OF REGULATIONS.—Section 108(b)(1) of CERCLA is amended by inserting after "this Act" the first place it appears the following: "and not later than one year after the date of submission of the insurability study under section 301(g) to Congress".

(b) EVIDENCE OF FINANCIAL RESPONSIBILITY.—Section 108(b)(2) of CERCLA is amended by adding the following at the end thereof: "Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.".

(c) PHASE-IN PERIOD.—Section 108(b)(3) of CERCLA is amended by striking out "over a period of not less than three and no more than six years" and inserting in lieu thereof "as quickly as can reasonably be achieved but in no event more than four years".

(d) DIRECT ACTION; LIABILITY.—Subsections (c) and (d) of section 108 of CERCLA are amended to read as follows:

"(c) DIRECT ACTION.—

"(1) RELEASES FROM VESSELS.—In the case of a release or threatened release from a vessel, any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility for such vessel under subsection (a). In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but the guarantor may not invoke any other defense that the guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

"(2) RELEASES FROM FACILITIES.—In the case of a release or threatened release from a facility, any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility for such facility under subsection (b), if the person liable under section 107 is in bankruptcy, reorganization, or arrangement pursuant

to the Federal Bankruptcy Code, or if, with reasonable diligence, jurisdiction in the Federal courts cannot be obtained over a person liable under section 107 who is likely to be solvent at the time of judgment. In the case of any action pursuant to this paragraph, the guarantor shall be entitled to invoke all rights and defenses which would have been available to the person liable under section 107 if any action had been brought against such person by the claimant and all rights and defenses which would have been available to the guarantor if an action had been brought against the guarantor by such person.

"(d) LIMITATION OF GUARANTOR LIABILITY.—

"(1) TOTAL LIABILITY.—The total liability under this Act of any guarantor for a vessel or facility shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the person liable under section 107.

"(2) OTHER LIABILITY.—Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual, or common law liability of a guarantor, including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed, interpret-

ed, or applied to diminish the liability of any person under section 107 of this Act or other applicable law.".

SEC. 109. PENALTIES.

(a) SECTION 103.—

(1) CRIMINAL PENALTY.—Section 103(b) of CERCLA is amended by—

(A) inserting after "knowledge of such release" the following: "or who submits in such a notification any information which he knows to be false or misleading"; and

(B) striking out "not more than $10,000 or imprisoned for not more than one year, or both" and inserting in lieu thereof "in accordance with section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisoned for not more than three years, or both".

(2) CIVIL PENALTY.—Section 103(b) of CERCLA is amended by inserting the following before the last sentence: "Any such person shall also be subject to a civil penalty of not more than $25,000 for each day during which such failure continues.".

(3) DESTRUCTION OF RECORDS.—Section 103(d)(2) of CERCLA is amended by striking out "not more than $20,000, or imprisoned for not more than one year or both." and inserting in lieu thereof

"in accordance with section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisoned for not more than three years, or both. Any such person shall also be subject to a civil penalty of not more than $25,000 for each day during which such violation continues.".

(b) SECTION 104.—Section 104(e)(2) of CERCLA is amended by adding the following at the end thereof:

"(9) CIVIL PENALTY.—Any person who fails or refuses to comply with a request or order under this subsection shall be subject to a civil penalty of not more than $25,000 for each day during which such failure or refusal continues.".

(c) SECTION 106.—Section 106(b) of CERCLA is amended—

(1) by striking out "who willfully" and inserting in lieu thereof "who, without sufficient cause, willfully"; and

(2) by striking out "$5,000" and inserting in lieu thereof "$25,000".

(d) SECTION 108.—Section 108 of CERCLA is amended by adding at the end the following:

"(e) CIVIL PENALTY.—Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of this section, the regulations

issued under this section, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $25,000 for each day of violation.".

(e) ASSESSMENT AND COLLECTION OF CIVIL PENALTIES.—Section 109 of CERCLA is amended to read as follows:

"SEC. 109. ASSESSMENT AND COLLECTION OF CIVIL PENALTIES.

"(a) UNDER SECTION 16 OF TOSCA.—Any civil penalty under this Act (other than section 106(b)) shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 16 of the Toxic Substances Control Act.

"(b) SUBPOENAS.—In any proceeding for the assessment of a civil penalty under this Act (other than section 106(b)), the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.

"(c) AWARDS.—The Administrator of the Environmental Protection Agency may pay an award of up to $10,000 to any individual who provides information leading to the arrest and conviction of any person for a violation subject to a criminal penalty under this Act, including any violation under section 103 and under this section. The Ad-

ministrator shall by regulation prescribe criteria for such an award and may pay any award under this subsection from the Fund, as provided in section 111.

(f) Section 112.—Section 112(b)(1) of CERCLA is amended by striking out "up to $5,000 or imprisoned for not more than one year, or both" and inserting in lieu thereof "in accordance with section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisoned for not more than three years, or both".

SEC. 110. SECTION 110.

Section 110 is not amended.

SEC. 111. USES OF FUND.

(a) Amount of Fund.—Section 111 of CERCLA is amended by inserting after "(a)" the following: "In General.—For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Superfund established under section 221 not more than $1,830,000,000 for each of the first 5 fiscal years beginning after September 30, 1985 (plus for each such fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection as has not been appropriated before the beginning of the fiscal year involved).".

(b) Use of Fund for Grants.—Section 111(a) of CERCLA is amended by striking out "and" at the end of

paragraph (3), by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and", and by adding the following new paragraph at the end thereof:

"(5) the cost of grants under section 117(e) (relating to grants for technical assistance).".

(c) RESPONSE CLAIMS.—(1) Section 111(a)(2) of CERCLA is amended to read as follows:

"(2) payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 311(c) of the Clean Water Act and amended by section 105 of this title: Provided, however, That such costs must be approved under said plan and certified by the responsible Federal official prior to the taking of any action for which costs may be sought; and".

(2) Section 112 is amended by striking subsection (a) and inserting in lieu thereof the following:

"(a) No claims may be asserted against the Fund pursuant to section 111(a)(2) of this title unless such claim is presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 107 of this title. In any case where the claim has not been satisfied within sixty days of presenta-

tion in accordance with this subsection, the claimant may present the claim to the Fund for payment: Provided, That no claim against the Fund may be considered during the pendency of an action in court to recover costs which are the subject of the claim.".

(3) Section 112(b) is amended by striking "$5,000" in paragraph (1) and inserting "$25,000" in lieu thereof; and by striking all of paragraphs (2), (3), and (4) and inserting in lieu thereof the following:

"(2) The President may, if he is satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim: Provided, That no claim may be awarded to the extent that a judicial judgment has been made on the costs that are the subject of the claim. If the President declines to pay all or part of the claim, the claimant may, within thirty days after receiving notice of the President's decision, request an administrative hearing.

"(3) In any proceeding under this subsection, the claimant shall bear the burden of proving his claim.

"(4) All administrative decisions made hereunder shall be in writing, with notification to all appropriate parties, and shall be rendered within ninety days of submission of a claim to an administrative law judge, unless all the parties to the claim agree in writing to an extension or unless the

President, in his discretion, extends the time limit for a period not to exceed sixty days.

"(5) All administrative decisions hereunder shall be final, and any party to the proceeding may appeal a decision within thirty days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the release or threat of release took place. In any such appeal, the decision shall be considered binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of discretion.

"(6) Within twenty days after the expiration of the appeal period for any administrative decision concerning an award, or within twenty days after the final judicial determination of any appeal taken pursuant to this subsection, the President shall pay any such award from the Fund. The President shall determine the method, terms, and time of payment.".

(d) USES INCLUDED.—(1) Section 111(c) of CERCLA is amended by striking out "and" at the end of paragraph (5), by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and", and by adding the following new paragraphs at the end thereof:

"(7) costs incurred by the Administrator in evaluating facilities pursuant to petitions under section 105(b);

"(8) the costs of contracts entered into under section 104(a)(1) to oversee and review the conduct of remedial investigations and feasibility studies undertaken by persons other than the Administrator and the costs of appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements, where the responsible party or parties have been determined, but where inadequate oversight assistance has been provided by that responsible party or parties;

"(9) the costs incurred by the Administrator in acquiring real estate or interests in real estate under section 104(j);

"(10) the cost of carrying out section 311(b) (relating to research, development, and demonstration of alternative and innovative treatment technologies and training programs), section 311(c) (relating to hazardous waste research), and section 311(d) (relating to university hazardous substance research centers), except that the amounts available for such purposes shall not exceed the amounts specified in subsection (o);

"(11) reimbursements to local governments under section 123, except that during the 5-fiscal-year period beginning October 1, 1985, not more than 0.1 percent

of the total amount appropriated from the Fund may be used for such reimbursements;

"(12) the costs of worker training and education grants under section 126(e), to the extent that such costs do not exceed $10,000,000 for each of the fiscal years 1986, 1987, 1988, 1989, and 1990; and

"(13) the costs of any awards granted under section 109(c).".

(2) Section 111(c)(4) of CERCLA is amended by striking out "epidemiologic studies" and inserting in lieu thereof "epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles".

(e) DEFINITION OF HEALTH ASSESSMENT.—Section 111(c) of CERCLA is amended by adding the following at the end thereof: "As used in paragraph (4), the term 'health assessment' shall have the meaning provided by section 116(f)(7).".

(f) NATURAL RESOURCE DAMAGE CLAIMS.—Section 111(b) of CERCLA is amended as follows:

(1) Insert "(1)" after "(b)".

(2) Add the following new paragraph at the end thereof:

"(2) PAYMENT OF NATURAL RESOURCE CLAIMS.—

"(A) GENERAL REQUIREMENTS.—No natural resource claim may be paid from the Fund unless the

Administrator determines that the claimant has exhausted all administrative and judicial remedies to recover the amount of such claim from persons who may be liable under section 107. All natural resource claims filed after December 1, 1985, may be paid only if a natural resource damage assessment has been carried out in accordance with regulations promulgated by the Secretary of the Interior.

"(B) CLAIMS PENDING AS OF DECEMBER 1, 1985.—(i) The Administrator shall determine the sum of natural resource claims against the fund which were pending but unpaid as of December 1, 1985.

"(ii) The Administrator may pay all or a portion of any claim referred to in clause (i) in accordance with the applicable requirements of this Act, except that the total amount paid from the Fund for the total of such claims shall not exceed 50 percent of the sum determined under clause (i). The Administrator may not pay any such claim unless the claim has been determined to be valid.

"(C) DEFINITION.—As used in this paragraph, the term 'natural resource claims' means claims for injury to, or destruction or loss of, natural resources. The term includes claims for the cost of natural resource damage assessment.".

(g) AMENDMENT TO SECTION 111(e).—Section 111(e)(1) of CERCLA is amended by inserting "pursuant to subsection (a)(2)" after "Fund" the first place it appears.

(h) INSPECTOR GENERAL.—Section 111(k) of CERCLA is amended to read as follows:

"(k) INSPECTOR GENERAL.—In each fiscal year, the Inspector General of each department, agency, or instrumentality of the United States which is carrying out any authority of this Act shall undertake the following:

"(1) AUDIT.—The conduct of an annual audit of all payments, obligations, reimbursements, or other uses of the Fund in the prior fiscal year, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The audit shall include an examination of a random sample of agreements with States carrying out response actions under this title and an examination of remedial investigations and feasibility studies prepared for remedial actions.

"(2) STATUS REPORT.—The preparation of a report on the status of all remedial and enforcement actions undertaken during the prior fiscal year. The status report shall include a comparison to remedial and enforcement actions undertaken in prior fiscal years.

"(3) ESTIMATE.—The preparation of an estimate of the amount of resources, including the number of work years or personnel, which would be necessary for the department, agency, or instrumentality to complete the implementation of all duties vested in the department, agency, or instrumentality under this Act.

The Inspector General shall submit to the Congress an annual report regarding the audit and status report required under this subsection. The report shall contain such recommendations as the Inspector General deems appropriate. Each Federal agency shall cooperate with the Inspector General in carrying out this subsection.".

(i) AUTHORIZATION OF APPROPRIATIONS.—Section 111 of CERCLA is amended by adding the following subsection after subsection (l):

"(m) GENERAL REVENUE SHARE OF SUPERFUND.—

"(1) IN GENERAL.—The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund:

"(A) For fiscal year 1986, $250,000,000.

"(B) For fiscal year 1987, $250,000,000.

"(C) For fiscal year 1988, $250,000,000.

"(D) For fiscal year 1989, $250,000,000.

"(E) For fiscal year 1990, $250,000,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Revenue Act of 1980) as has not been appropriated before the beginning of the fiscal year involved.

"(2) COMPUTATION.—The amounts authorized to be appropriated under paragraph (1) of this subsection in a given fiscal year shall be available only to the extent that such amount exceeds the amount determined by the Secretary under section 221(b)(1)(B) for the prior fiscal year.".

(j) ATSDR.—Section 111 of CERCLA is amended by adding the following new subsection after subsection (m):

"(n) AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.—For fiscal year 1986 and each fiscal year thereafter, not less than $30,000,000 shall be directly available to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) and section 116. Any funds so made available which are not obligated by the end of the

fiscal year in which made available shall be returned to the Fund.".

(k) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM.—Section 111 of CERCLA is amended by adding the following new subsection after subsection (n):

"(o) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM.—(1) For each of the fiscal years 1986, 1987, 1988, 1989, and 1990, not more than $20,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 311(b) (relating to research, development, and demonstration) other than basic research. Such amounts shall remain available until expended.

"(2) From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 311(a) (relating to hazardous substance research, demonstration, and training activities):

"(A) For the fiscal year 1986, $3,000,000.

"(B) For the fiscal year 1987, $10,000,000.

"(C) For the fiscal year 1988, $20,000,000.

"(D) For the fiscal year 1989, $30,000,000.

"(E) For the fiscal year 1990, $35,000,000.

No more than 10 percent of such amounts shall be used for training under section 311(a) in any fiscal year.

"(3) For each of the fiscal years 1986, 1987, 1988, 1989, and 1990, not more than $5,000,000 of the amounts available in the Fund may be used for the purposes of section 311(d) (relating to university hazardous substance research centers).".

(l) CERTAIN NOTIFICATION PROCEDURES.—Section 111 of CERCLA is amended by inserting after subsection (o) the following new subsection:

"(p) NOTIFICATION PROCEDURES FOR LIMITATIONS ON CERTAIN PAYMENTS.—Not later than 90 days after the date of the enactment of this subsection, the Administrator shall develop and implement procedures to adequately notify, as soon as practicable after a site is included on the National Priorities List, concerned local and State officials and other concerned persons of limitations, set forth in subsection (a)(2) of this section, on the payment of claims for necessary response costs incurred with respect to such site.".

SEC. 112. CLAIMS PROCEDURE.

Section 112(d) of CERCLA is amended to read as follows:

"(d) STATUTE OF LIMITATIONS.—

"(1) CLAIMS FOR RECOVERY OF COSTS.—No claim may be presented under this section for recovery of the costs referred to in section 107(a) after the date six years after the date of completion of all response action.

"(2) MINORS AND INCOMPETENTS.—The time limitations contained herein shall not begin to run—

"(A) against a minor until the earlier of the date when he reaches eighteen years of age or the date on which a legal representative is duly appointed for him, or

"(B) against an incompetent person until the earlier of the date on which his incompetency ends or the date on which a legal representative is duly appointed for him.".

SEC. 113. LITIGATION, JURISDICTION, AND VENUE.

(a) NATIONWIDE SERVICE OF PROCESS.—Section 113 of CERCLA is amended by adding the following new subsection at the end thereof:

"(e) NATIONWIDE SERVICE.—In any action by the United States under section 106 or 107, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.".

(b) CONTRIBUTION; STATUE OF LIMITATION.—Section 113 of CERCLA is amended by adding the following new subsections after subsection (e):

"(f) CONTRIBUTION.—

"(1) CONTRIBUTION.—Except as provided in paragraph (2), any person potentially liable or held to be liable in an action under section 106 or section 107 may bring an action for contribution or indemnity against any other person liable or potentially liable. In any such action in a court of the United States the Federal Rules of Civil Procedure shall apply. In any such contribution action in a court of the United States, the court may use its equitable powers to apportion costs among the liable parties, taking relevant equitable considerations into account. Except as provided in paragraph (2) of this subsection, this subsection shall not impair any right of contribution or indemnity under existing law.

"(2) SETTLEMENT.—A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential

liability of the others by the amount of the settlement. This paragraph does not apply to a settlement which was achieved through fraud, misrepresentation, other misconduct by one of the parties to the settlement, or mutual mistake of fact.

"(3) PERSONS NOT PARTY TO SETTLEMENT.—(A) If the United States or a State has obtained less than complete relief from a person who has resolved its liability to the United States or the State in an administrative or judicially approved settlement, the United States or the Secretary may bring an action against any person who has not so resolved its liability.

"(B) A person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may bring an action for contribution or indemnification against any person who is not party to a settlement referred to in paragraph (2).

"(C) In any action under this paragraph, the rights of any person who has resolved its liability to the United States or a State shall be subordinate to the rights of the United States or the State. Any contribu-

tion action brought under this paragraph shall be governed by Federal law.

"(g) STATUTE OF LIMITATIONS.—

"(1) ACTIONS FOR NATURAL RESOURCE DAMAGES.—Except as provided in paragraph (3), no action may be commenced for damages (as defined in section 101(6)) under this Act, unless that action is commenced within 3 years after the later of the following:

"(A) The date of the discovery of the loss.

"(B) The date on which regulations are promulgated under section 301(c).

With respect to any facility listed on the national priorities list, any Federal facility identified under section 120, or any facility at which a remedial action is otherwise scheduled, an action for damages must be commenced within 3 years after the completion of the remedial action (excluding operation and maintenance activities), but in no event may an action for damages with respect to such a facility be commenced before selection of the remedial action if the Administrator is diligently proceeding with a remedial investigation and feasibility study under section 104(b). The limitation in the preceding sentence on commencing an action *before selection of the remedial action does not apply to actions filed on or before December 11, 1983.*

"(2) ACTIONS FOR RECOVERY OF COSTS.—An initial action for recovery of the costs referred to in section 107 must be commenced—

"(A) for a removal action, within 3 years after completion of the removal action, except that such cost recovery action must be brought within 6 years after a determination to grant a waiver under section 104(c)(1)(C) for continued response action; and

"(B) for a remedial action, within 6 years after initiation of physical on-site construction of the remedial action, provided that, if the remedial action is initiated within 3 years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this subparagraph.

In any such initial action, the court shall enter a declaratory judgment on liability for response costs that will be binding on any subsequent action or actions to recover further response costs. A subsequent action or actions under section 107 for further response costs at the facility may be maintained at any time during the response action, but must be commenced no later than

3 years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under section 107 for recovery of costs at any time after such costs have been incurred.

"(3) CONTRIBUTION.—No action for contribution for any response costs or damages may be commenced more than 3 years after—

"(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

"(B) the date of entry of a judicially approved settlement with respect to such costs or damages.

"(4) SUBROGATION.—No action based on rights subrogated pursuant to this section by reason of payment of a claim may be commenced under this title more than 3 years after the date of payment of such claim.

"(5) MINORS AND INCOMPETENTS.—The time limitations contained herein shall not begin to run—

"(A) against a minor until the earlier of the date when he reaches eighteen years of age or the date on which a legal representative is duly appointed for him, or

"(B) against an incompetent person until the earlier of the date on which his incompetency ends or the date on which a legal representative is duly appointed for him.".

(c) PRE-ENFORCEMENT REVIEW.—

(1) CONFORMING AMENDMENT.—Section 113(b) of CERCLA is amended by striking out "subsection" and inserting in lieu thereof "subsections" and inserting "and (h)" after "(a)".

(2) TIMING OF REVIEW; ADMINISTRATIVE RECORD.—Section 113 of CERCLA is amended by adding at the end thereof the following new subsections:

"(h) TIMING OF REVIEW.—No court shall have jurisdiction to review any challenges to removal or remedial action selected under section 104 or any order issued under section 104(b) or to review any order issued under section 106(a), in any action other than one of the following:

"(1) An action under section 107 to recover response costs or damages or for contribution or indemnification.

"(2) An action to enforce an order issued under section 104(b) or 106(a) or to recover a penalty for violation of such order.

"(3) An action for reimbursement under section 106(b)(2).

"(4) An action under section 310 alleging that the removal or remedial action taken under section 104 or secured under section 106 was in violation of any requirement of this Act. Such an action may not be brought with regard to an ongoing removal where a remedial action is to be undertaken at the site.

"(5) An action by the United States under section 106 for injunctive relief.

"(6) A motion by a potentially responsible party to review the Administrator's selection of the remedy under a consent decree which has been entered under section 106 and in which such potentially responsible party has made a commitment to undertake a remedial investigation and feasibility study and to perform or cause to be performed all of the judicially approved remedial action.

"(7) A motion by a potentially responsible party to review the Administrator's selection of the remedy under a consent decree which has been entered under section 106 and in which such potentially responsible party has agreed to perform or cause to be performed all of the judicially approved remedial action.

"(8) A motion by a potentially responsible party who is a recipient of an administrative order under section 106 to review the Administrator's selection of

the remedy, where the recipient of the order has, without admitting that the release in question constituted an imminent and substantial endangerment under section 106 and without admitting liability, agreed to the terms of the order except for the Administrator's selection of the remedy. In such cases, the order shall be entered in the District Court as a consent decree.

In ruling on motions under paragraphs (6), (7), and (8), the District Court shall act without delay and shall rule expeditiously. There shall be no right of appeal by any party from such ruling.

"(i) INTERVENTION.—In any action commenced under subsection (h), any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest.

"(j) JUDICIAL REVIEW.—

"(1) IN GENERAL.—For purposes of judicial review under this section, the administrative record shall consist of—

"(A) in the case of a removal action, the record developed under regulations issued pursuant to subsection (1)(2)(A); and

"(B) in the case of a remedial action, the record developed under subsection (1)(2)(B).

"(2) LIMITATION.—In any judicial action under section 106 or 107, judicial review of any issues concerning the adequacy of any response action taken or ordered by the Administrator shall be limited to the administrative record. Objections and evidence which were not made a part of the administrative record may be considered by the court only if such objections and evidence were not reasonably available when the record was being developed.

"(3) STANDARD.—In considering objections raised in any judicial action under section 106 or 107, the court shall uphold the Administrator's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law.

"(4) REMEDY.—If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award only the response costs or damages or other relief being sought to the extent that such relief is not inconsistent with the national contingency plan.

"(5) PROCEDURAL ERRORS.—In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

"(k) ADMINISTRATIVE RECORD AND PARTICIPATION PROCEDURES.—

"(1) ADMINISTRATIVE RECORD.—The Administrator shall establish an administrative record upon which the Administrator shall base the selection of a response action. The record shall consist of—

"(A) in the case of a removal action, the record developed under regulations issued pursuant to paragraph (2)(A); and

"(B) in the case of a remedial action, the record developed under paragraph (2)(B).

The administrative record shall be available to the public at or near the facility at issue. The Administrator also may place duplicates of the administrative record at any other location.

"(2) PARTICIPATION PROCEDURES.—

"(A) REMOVAL ACTION REGULATIONS.—The Administrator shall promulgate regulations in accordance with chapter 5 of title 5 of the United

States Code establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which the Administrator will base the selection of removal actions and on which judicial review of removal actions will be based.

"(B) REMEDIAL ACTION REQUIREMENTS.—The Administrator shall provide for the participation of interested persons, including potentially responsible parties, in the development of the administrative record on which the Administrator will base the selection of remedial actions and on which judicial review of remedial actions will be based. The administrative record under this subparagraph shall include, at a minimum, the following:

"(i) Notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.

"(ii) A reasonable opportunity to comment and provide information regarding the plan.

"(iii) An opportunity for a public meeting in the affected area, in accordance with section 117(a)(2).

"(iv) A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations.

"(v) A statement of the basis and purpose of the selected action.

For purposes of this subparagraph, the administrative record shall include all items developed and received under this subparagraph and all items described in the second sentence of section 117(d). The Administrator shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code to carry out the requirements of this subparagraph.

"(C) POTENTIALLY RESPONSIBLE PARTIES.—The Administrator shall make reasonable efforts to identify and notify potentially responsible parties as early as possible before selection of a response action. Nothing in this paragraph shall be construed to be a defense to liability under this Act.".

(d) REIMBURSEMENT.—Section 106(b) of CERCLA is amended as follows:

(1) Insert "(1)" after "(b)".

(2) Strike out "who willfully" and insert "who, without sufficient cause, willfully".

(3) Add at the end thereof the following new paragraph:

"(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) may, within 60 days after completion of the required action, petition the Administrator for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate that applies to investments of the Fund under section 223(b) of this Act.

"(B) If the Administrator refuses to grant all or part of a petition made under this paragraph, the petitioner may within 30 days of receipt of such refusal file an action against the Administrator in the appropriate United States district court seeking reimbursement from the Fund.

"(C) Except as provided in subparagraph (D), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 107(a) and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

"(D) A petitioner who is liable for response costs under section 107(a) may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the Administrator's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

"(E) Reimbursement awarded by a court under subparagraph (C) or (D) may include appropriate costs, fees, and other expenses in accordance with subsections (a) and (d) of section 2412 of title 28 of the United States Code. A petitioner who has established pursuant to subparagraph (C) that it is not liable for any response costs may also receive compensatory damages. Any reimbursement awarded under this subparagraph shall not be paid from the Fund.

"(F) In any action under section 113(h), if the remedial action conducted under an administrative order or consent decree is determined to be arbitrary and capricious or otherwise not in accordance with law, any person who has complied with the terms of any administrative order or consent decree issued under subsection (a) may petition the Administrator for reimbursement from the Fund for the rea-

sonable costs of such action, including interest. The Administrator shall grant such petition for all reasonable response costs incurred by the petitioner pursuant to the portions of the administrative order for consent decree found to be arbitrary and capricious or otherwise not in accordance with law.".

SEC. 114. RELATIONSHIP TO OTHER LAW.

Section 114(c) of CERCLA is amended to read as follows:

"(c) STATE FUNDS.—Notwithstanding any provision of this or any other law, a State may require any person to contribute to any fund the purpose of which is to pay for any costs of response or damages.".

SEC. 115. DELEGATION OF FUNCTIONS.

Section 115 of CERCLA is amended to read as follows:

"SEC. 115. AUTHORITY TO DELEGATE FUNCTIONS AND ISSUE REGULATIONS.

"(a) DELEGATION OF FUNCTIONS.—

"(1) THE PRESIDENT.—The President is authorized to delegate and assign any duties or powers imposed upon or assigned to him necessary to carry out the provisions of this title.

"(2) THE ADMINISTRATOR.—The Administrator is authorized to delegate and assign to officers and em-

ployees of the Environmental Protection Agency any duties or powers imposed upon or assigned to him necessary to carry out the provisions of this title.

"(b) REGULATIONS.—The Administrator is authorized to issue any regulations necessary to carry out the provisions of this title.".

SEC. 116. PUBLIC HEALTH ASSESSMENT AND PROTECTION AUTHORITIES.

Title I of CERCLA is amended by inserting the following new section after section 115:

"SEC. 116. AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.

"(a) ESTABLISHMENT.—There is hereby established within the Public Health Service an agency, headed by an administrator, to be known as the Agency for Toxic Substances and Disease Registry (hereinafter in this Act referred to as 'ATSDR'). The Administrator of ATSDR shall report to the Secretary of the Department of Health and Human Services.

"(b) DUTIES.—The Administrator of ATSDR shall effectuate and implement the health-related authorities of this Act with the cooperation of—

"(1) the Administrator,

"(2) the Commissioner of the Food and Drug Administration,

"(3) the Directors of the National Institutes of Health, the National Institute of Environmental Health Sciences, the National Institute of Occupational Safety and Health, and the Center for Disease Control,

"(4) the Administrator of the Occupational Safety and Health Administration,

"(5) the Administrator of the Social Security Administration,

"(6) the Secretary of Transportation, and

"(7) appropriate State and local health officials.

"(c) LIST OF RESTRICTED AREAS.—In cooperation with the States and other agencies of the Federal Government, the Administrator of ATSDR shall establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of contamination by hazardous substances.

"(d) LIST OF SUBSTANCES.—

"(1) INITIAL 100.—Within six months after the date of the enactment of this section, the Administrator of ATSDR and the Administrator shall prepare a list, in order of priority, of at least 100 hazardous substances which are most commonly found at facilities on the National Priorities List and which are posing the most significant potential threat to human health due

to their known or suspected toxicity to humans and the potential for human exposure to such substances at facilities on the National Priorities List or at facilities to which a response to a release or a threatened release under section 104 is under consideration.

"(2) REVISION.—Within 24 months after the date of the enactment of this section, the Administrator of ATSDR and the Administrator shall revise the list prepared under paragraph (1). Such revision shall include, in order of priority, the addition of 100 or more such hazardous substances. In each of the three consecutive 12-month periods that follow, the Administrator of ATSDR shall revise, in the same manner as provided in the two preceding sentences, such list to include not fewer than 25 additional hazardous substances. The Administrator of ATSDR and the Administrator shall not less often than once every year thereafter revise such list to include additional hazardous substances in accordance with the criteria in paragraph (1).

"(e) INFORMATION ON HEALTH EFFECTS.—

"(1) LITERATURE, STUDIES, ETC.—The Administrator of ATSDR shall establish and maintain an inventory of research literature, reports, and studies on

the health effects of each hazardous substance listed pursuant to subsection (d).

"(2) TOXICOLOGICAL PROFILES.—Based on all available information, including information maintained under paragraph (1) and data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator of ATSDR shall prepare toxicological profiles of each of the substances listed pursuant to subsection (d). The toxicological profiles shall be prepared in accordance with guidelines developed by the Administrator of ATSDR and the Administrator. Such profiles shall include, but not be limited to—

"(A) an examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects;

"(B) a determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a signifi-

cant risk to human health of acute, subacute, and chronic health effects; and

"(C) where, appropriate, toxicological testing directed toward determining the maximum exposure level of a hazardous substance that is safe for humans.

The profiles required to be prepared under this paragraph for those hazardous substances listed under paragraph (1) of subsection (d) shall be completed, at a rate of 25 per year, within four years after the date of the enactment of this section. A profile required on a substance listed pursuant to paragraph (2) of subsection (d) shall be completed within three years after addition to the list. The profiles prepared under this paragraph shall be of those substances highest on the list of priorities under subsection (d) for which profiles have not previously been prepared. Profiles required under this paragraph shall be revised and republished as necessary, but no less often than once every three years. Such profiles shall be provided to the States and made available to other interested parties.

"(3) HEALTH EFFECTS RESEARCH.—For any hazardous substance for which adequate information is not available (or for which such information is under development as determined under paragraph (2)(B)),

the Administrator of ATSDR shall assure the initiation of a program of research designed to determine the health effects of such hazardous substance. Where feasible, such program shall seek to develop methods to determine the health effects of such hazardous substance in combination with other hazardous substances with which it is commonly found. Before assuring the initiation of such program, the Administrator of ATSDR shall consider recommendations of the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act on the types of research that should be done and on who should do the research.

"(4) COORDINATION.—The Administrator of ATSDR and the Administrator shall coordinate the development and implementation of any research program under this subsection. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate in the discretion of the Administrator and the Administrator of ATSDR and consistent with such purpose, a research program under this subsection may be carried out using programs of toxicological testing established under the Toxic Sub-

stances Control Act and the Federal Insecticide, Fungicide, and Rodenticide Act.

"(f) HEALTH ASSESSMENTS.—

"(1) FACILITIES ON NPL.—The Administrator of ATSDR shall perform a health assessment for each facility on the National Priorities List established under section 105 which meets each of the following criteria:

"(A) The presence of a hazardous substance has been confirmed at the facility.

"(B) Pathways of human exposure to hazardous substances have been demonstrated to exist at the facility, especially if such pathways involve direct contact with hazardous substances.

"(C) A human population has been exposed, or there exists a significant possibility that a human population has been exposed, to hazardous substances through the identified pathways and there may exist a significant threat of current or future adverse health effects for the population so exposed.

The determination of whether any facility on such list meets such criteria shall be based on information provided by the Administrator regarding such criteria. Nothing in this paragraph shall preclude the Administrator of ATSDR from performing, where appropriate *and consistent with the National Contingency Plan, health assessments of releases of hazardous substances from any other facilities, including facilities which are not on such list. The Administrator or any State may request the Administrator of ATSDR to perform a health assessment under this section. The Administrator of ATSDR and the Administrator shall coordinate the performance of health assessments under this section.*

"(2) PETITION TO ADMINISTRATOR OF ATSDR.—Any individual or group of individuals may submit a petition to the Administrator of ATSDR to perform a health assessment under this subsection. The petition shall provide evidence demonstrating that such individual or group is being exposed to a hazardous substance, and an empirical analysis of the level of exposure. The Administrator of ATSDR shall take action under paragraph (3)(A) if the Administrator of ATSDR determines that there is a reasonable likelihood that the exposure may present a significant risk to human health and that there is a reasonable likelihood that the hazardous substance is from one of the following facilities:

"(A) A facility where such substance is (or was in the past) treated, stored, recycled, or disposed of, on a regular basis.

"(B) A facility at which removal action is being taken (or was taken in the past) under any provision of this Act.

"(3) INITIATION OR EXPLANATION REQUIRED.—Within 45 days after receipt of a petition under paragraph (2), the Administrator of ATSDR shall do one of the following:

"(A) Initiate a health assessment.

"(B) Publish a written explanation of one of the following:

"(i) A determination that there is not a reasonable likelihood that the substance is from a facility referred to in paragraph (2).

"(ii) A determination that there is not a reasonable likelihood that the exposure presents a significant risk to human health.

"(iii) A determination that the evidence submitted or information available to the Administrator of ATSDR is not adequate to determine whether there is a reasonable likelihood that the substance is from a facility referred to in paragraph (2) or there is a rea-

sonable likelihood that the exposure presents a significant risk to human health. If the Administrator of ATSDR determines under this clause that the evidence submitted is not adequate, the Administrator of ATSDR shall, in the written explanation, identify the additional information necessary for the Administrator of ATSDR to determine whether there is a reasonable likelihood that the substance is from a facility referred to in paragraph (2) or there is a reasonable likelihood that the exposure may present a significant risk to human health.

"(C) Respond in writing to the petition submitted under paragraph (2) by setting forth a schedule for review of the petition or a schedule to initiate a health assessment.

Each assessment under this paragraph shall be completed within six months after the date on which the health assessment is initiated.

"(4) PRIORITIES OF ASSESSMENTS.—In determining the priority in which to conduct health assessments under this subsection, the Administrator of ATSDR, in consultation with the Administrator, shall give priority to those facilities at which there is docu-

mented evidence of the release of hazardous substances, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of ATSDR existing health assessment data are inadequate to assess the potential risk to human health as provided in paragraph (7). In determining the priorities for conducting health assessments under this subsection, the Administrator of ATSDR shall consider the National Priorities List schedules and the needs of the Environmental Protection Agency pursuant to schedules for remedial investigation and feasibility studies.

"(5) RIFS.—Where a health assessment is done at a site on the National Priorities List, the Administrator of ATSDR shall complete such assessment promptly and, to the maximum extent practicable, before the completion of the remedial investigation and feasibility study at the facility concerned.

"(6) NOTICE AND REPORTING.—Any State or political subdivision carrying out a health assessment for a facility shall report the results of the assessment to the Administrator of ATSDR and the Administrator and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of ATSDR shall state such

recommendation in any report on the results of any assessment carried out directly by the Administrator of ATSDR for such facility and shall issue periodic reports which include the results of all the assessments carried out under this subsection.

"(7) DEFINITION.—For the purposes of this section and section 111(c)(4), the term 'health assessment' means a determination of the potential individual and population human health risks posed by a facility. A health assessment shall be based on but not limited to the following information:

"(A) The nature and extent of contamination.

"(B) The existence, scope, and magnitude of potential pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination).

"(C) The size, population characteristics, and potential susceptibility of the community within the likely pathways of exposure.

"(D) The comparison of measured or estimated human exposure levels which are identified for hazardous substances and any exposure levels for such hazardous substances which are determined to be of significance to human health, in-

cluding but not limited to those determined in the toxicological profiles under subsection (e)(2).

"(E) The comparison of appropriate existing morbidity and mortality data, relevant to the suspected population at risk of exposure, on diseases that may be associated with the observed levels of exposure.

If a significant excess of disease in a population is identified under subparagraph (E), the health assessment shall include, to the maximum extent practicable, an assessment of attributable risk for the purpose of determining the most likely explanations for that excess. A health assessment may include literature searches, information summarization and evaluation of existing environmental data, pilot samples, testing for food chain contamination, and similar activities. The Administrator of ATSDR shall utilize appropriate data available from the Administrator to avoid duplication of effort.

"(8) PURPOSE.—The purpose of health assessments under this section shall be to assist in determining whether actions under subsection (k) of this section should be taken to reduce human exposure to hazardous substances from a facility and whether additional information on human exposure and associated health

risks is needed and should be acquired by conducting epidemiological studies under subsection (g), establishing a registry under subsection (h), establishing a health surveillance program under subsection (i), or through other means. In using the results of health assessments for determining additional actions to be taken under this section, the Administrator of ATSDR may consider additional information on the risks to the potentially affected population from all sources of such hazardous substances including known point or nonpoint sources other than those from the facility in question.

"(9) RESULTS, RECOMMENDATIONS, AND EVALUATIONS.—At the completion of each health assessment, the Administrator of ATSDR shall provide the Administrator and each affected State with the results of such assessment, including recommendations concerning the need to further reduce exposure. In addition, if the health assessment indicates that the release or threatened release concerned may pose a serious threat to human health or the environment, the Administrator of ATSDR shall so notify the Administrator who shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in section 105(a)(8)(A) to determine wheth-

er the site shall be placed on the National Priorities List or, if the site is already on the list, the Administrator of the ATSDR may recommend to the Administrator that the site be accorded a higher priority.

"(10) RECOVERY OF COSTS.—In any case in which a health assessment performed under this subsection (including one required by section 3019(b) of the Solid Waste Disposal Act) discloses the exposure of a population to the release of a hazardous substance from a facility, the costs of such health assessment may be recovered as a cost of response under section 107 of this Act.

"(g) STUDIES.—

"(1) PILOT HEALTH EFFECTS STUDIES.—Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.

"(2) FULL SCALE.—Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of such pilot study or other study or health assessment, the Administrator of ATSDR shall

conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances from a release or threatened release.

"(h) REGISTRY.—

"(1) AUTHORITY TO ESTABLISH.—In any case in which the results of a health assessment or epidemiologic study indicate a potential or observed significant risk to human health, the Administrator of ATSDR shall evaluate whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection. The Administrator of ATSDR shall establish such registry when such evaluation determines that an effective mechanism can be established to satisfactorily maintain such registry over a sufficient period of time to accomplish the desired purposes of this paragraph and either—

"(A) the registry could benefit its participants by prevention or early detection of serious adverse health effects from exposure to hazardous substances; or

"(B) the registry could provide significant information not currently available on human health effects of exposure to one or more hazardous substances.

"(2) UNLAWFUL DISCLOSURE.—The identity of any individual listed on a registry shall not be disclosed to any person except as may be necessary to carry out this section. Any person violating this paragraph shall be fined not more than $1,000 or imprisoned for not more than six months, or both, and shall be required to pay the costs of prosecution.

"(i) HEALTH SURVEILLANCE PROGRAM.—Where the Administrator of ATSDR has determined that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances based on the results of a health assessment conducted under subsection (f), an epidemiologic study conducted under subsection (g), or an exposure registry that has been established under subsection (h), and the Administrator of ATSDR has determined that such exposure is the result of a release from a facility, the Administrator of ATSDR shall initiate a health surveillance program for such population. This program shall include but not be limited to—

"(1) periodic medical testing where appropriate of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk; and

"(2) a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

"(j) REPORT EVERY TWO YEARS.—Two years after the date of the enactment of this subsection and every two years thereafter, the Administrator of ATSDR shall prepare and submit to the Administrator and Congress a report on the results of the activities of ATSDR regarding—

"(1) health assessments and pilot health effects studies conducted;

"(2) epidemiologic studies conducted;

"(3) hazardous substances which have been listed under subsection (d), toxicological profiles which have been developed, and toxicologic testing which has been conducted or which is being conducted under subsection (e);

"(4) registries established under subsection (h); and

"(5) an overall assessment, based on the results of activities conducted by the Administrator of ATSDR, of the linkage between human exposure to individual or combinations of hazardous substances due to releases from facilities covered by this Act or the Solid Waste Disposal Act and any increased incidence or prevalence of adverse health-effects in humans.

"(k) *REDUCTION OF EXPOSURE.—*

"(1) *SIGNIFICANT HUMAN EXPOSURE LEVEL.—If a health assessment or other study carried out under this Act identifies an individual or individuals exposed to a hazardous substance in a manner which presents a significant risk to human health, the Administrator shall take such steps as may be necessary to abate the risk. Such steps may include the following:*

"(A) *Provision of alternate household water supplies.*

"(B) *Temporary or permanent relocation of individuals.*

"(2) *INSUFFICIENT INFORMATION.—In any case in which information is insufficient, in the judgment of the Administrator of ATSDR or the Administrator to determine a significant human exposure level with respect to a hazardous substance, the Administrator may take such steps as may be necessary to reduce the exposure of any person to such hazardous substance to such level as the Administrator deems necessary to protect human health.*

"(l) *NO DELAY OF OTHER ACTION.—In the case of any hazardous substance which is subject to a petition or study under this section, nothing in this section shall be construed to delay or otherwise impair the authority of the*

Administrator to exercise any authority vested in the Administrator under any other provision of law, including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act or the response and abatement authorities of this Act.

"(m) PEER REVIEW.—All studies and results of research (other than health assessments) conducted under this section shall be reported or adopted only after appropriate peer review. Such peer review shall be completed, to the maximum extent practicable, within a period of 60 days and shall be conducted by panels consisting of no less than three nor more than seven members, who shall be scientific experts selected for such purpose by the Administrator of ATSDR on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Administrator of ATSDR.

"(n) EDUCATIONAL MATERIALS.—In the implementation of this section and other health-related authorities of this Act, the Administrator of ATSDR shall assemble, develop, as necessary, and distribute to the States, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials on the medical surveillance, screening, and methods of diagnosis and treat-

ment of injury or disease related to exposure to hazardous substances (giving priority to those listed in subsection (d)), through such means as the Administrator of ATSDR deems appropriate.

"(o) DIRECT ACTION AND COOPERATIVE AGREEMENTS.—The activities described in this section and section 111(c)(4) shall be carried out by the Administrator of ATSDR, either directly or through cooperative agreements with States (or political subdivisions thereof) which the Administrator of ATSDR determines are capable of carrying out such activities. Such activities shall include provision of consultations on health information, the conduct of health assessments, including those required under section 3019(b) of the Solid Waste Disposal Act, health studies, registries, and health surveillance.

"(p) MINIMUM NUMBER OF EMPLOYEES.—The President shall provide adequate personnel for ATSDR, which shall not be fewer than 100 employees. For purposes of determining the number of employees under this subsection, an employee employed by ATSDR on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek.

"(q) FEDERAL FACILITIES.—In accordance with section 120, the Administrator of ATSDR shall have the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as such Administrator has with respect to any nongovernmental entity.

"(r) EMERGENCIES.—In cases of public health emergencies caused or believed to be caused by exposure to toxic substances, the Administrator of ATSDR—

"(1) shall arrange for medical testing and care to exposed individuals, including, but not limited to, tissue sampling, chromosomal testing, epidemiological studies, or any other assistance appropriate under the circumstances;

"(2) shall offer technical assistance and consultation to local and State health authorities that are providing medical testing and care to exposed individuals; and

"(3) shall use any authority provided under this section;

whether or not the determinations or other preliminary steps otherwise required under this section have been made or taken. Nothing in this subsection shall be construed to create an entitlement program.

"(s) POLLUTANTS AND CONTAMINANTS.—If the Administrator of ATSDR determines that it is appropriate for purposes of this section to treat a pollutant or contaminant as a hazardous substance, such pollutant or contaminant shall be treated as a hazardous substance for such purpose.".

SEC. 117. PUBLIC PARTICIPATION.

Title I of CERCLA is amended by adding the following new section after section 116:

"SEC. 117. PUBLIC PARTICIPATION.

"(a) PROPOSED PLAN.—Before adoption of any plan for remedial action to be undertaken by the Administrator or by a State or by any other person at any site, the Administrator or State, as appropriate, shall take both of the following actions:

"(1) Publish a notice and brief analysis of the proposed plan and make such plan available to the public.

"(2) Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility at issue regarding the proposed plan and regarding any waivers under section 121 (relating to cleanup standards). The Administrator shall keep a transcript of the meeting and make such transcript available to the public.

The notice and analysis published under paragraph (1) shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan.

"(b) FINAL PLAN.—Notice of the final remedial action plan adopted shall be published and the plan shall be made available to the public before commencement of any remedial action. Such final plan shall be accompanied by a discussion of any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under subsection (a).

"(c) EXPLANATION OF DIFFERENCES.—After adoption of a final remedial action plan—

"(1) if any remedial action is taken,

"(2) if any enforcement action under section 106 is taken, or

"(3) if any settlement or consent decree under section 106 is entered into,

and if such action, settlement, or decree differs in any significant respects from the final plan, the Administrator shall publish an explanation of the significant differences and the reasons such changes were made.

"(d) PUBLICATION.—For the purposes of this section, publication shall include, at a minimum, publication in a major local newspaper of general circulation. In addition,

each item developed, received, published, or made available to the public under this section shall be available for public inspection and copying at or near the facility at issue.

"(e) GRANTS FOR TECHNICAL ASSISTANCE.—

"(1) AUTHORITY.—In accordance with rules promulgated by the Administrator, the Administrator may make grants available to any group of individuals which may be affected by a release or threatened release at any facility which is listed on the National Priorities List under the National Contingency Plan. Such grants shall be for the purpose of enabling the group to obtain technical assistance to review and assess data and information which has been prepared by the Administrator with respect to such facility and which is required to be published under this subsection.

"(2) AMOUNT.—The amount of any grant under this subsection may not exceed $25,000 for a single grant recipient. The Administrator may waive the $25,000 limitation in any case where such waiver is necessary to carry out the purposes of this subsection. Each grant recipient shall be required, as a condition of the grant, to contribute at least 20 percent of the total of costs of the expert advice and technical assistance for which such grant is made. The Administrator may waive the 20 percent contribution requirement if

the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one grant may be made under this subsection with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.".

SEC. 118. MISCELLANEOUS PROVISIONS

(a) GENERAL PROVISIONS RELATING TO RESPONSE UNDER TITLE I.—Title I of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 118. GENERAL PROVISIONS RELATING TO RESPONSE UNDER TITLE I.

"(a) SCOPE OF PROGRAM.—The Administrator shall not respond under this Act to any of the following:

"(1) A release or threat of a release of a hazardous substance or pollutant or contaminant from residential dwellings or businesses or community structures where such dwellings or structures are not used for the deposition, storage, processing, treatment, transportation, or disposal of hazardous substances.

"(2) A release or threat of a release of a hazardous substance or pollutant or contaminant into public or private drinking water supplies due to deterioration of the system through ordinary use.

"(3) A release or threat of a release resulting exclusively from the mining of coal for which a timely response action is available and authorized under the Surface Mine Control and Reclamation Act of 1977.

"(4) A release or threat of a release of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found.

Notwithstanding the preceding provisions of this subsection, the Administrator may respond under this Act to any release or threat of release of a hazardous substance or pollutant or contaminant (including radon) in any form if the Administrator determines, in his discretion, that the release or threat of release constitutes a major public health or environmental emergency. As used in this subsection the term 'respond under this Act' includes response action under section 104 and abatement action under section 106.

"(b) HIGH PRIORITY FOR WELLS AND CERTAIN AQUIFERS.—For purposes of taking action under section 104 or section 106 and listing facilities on the National Priorities List, the Administrator shall give high priority to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a sole or principal drinking water source designated under section 1424(e) of

title XIV of the Public Health Service Act (the Safe Drinking Water Act).".

(b) REMOVAL AND TEMPORARY STORAGE OF CONTAINERS OF RADON CONTAMINATED SOIL.—Not later than 90 days after the date of the enactment of this Act, the Administrator shall make a grant of $7,500,000 to the State of New Jersey for transportation from residential areas in the State of New Jersey and temporary storage of approximately 14,000 containers of radon contaminated soil which is the subject of a remedial action for which a remedial investigation and feasibility study has been initiated before such date. Such containers shall be transported to and temporarily stored at any site in the State of New Jersey designated by the Governor of such State. For purposes of section 111(a) of CERCLA, the grant under this subsection for transportation and storage of such containers shall be treated as payment of governmental response cost incurred pursuant to section 104 of CERCLA.

(c) UNCONSOLIDATED QUARTERNARY AQUIFER.—Notwithstanding any other provision of law, no person may—

(1) locate or authorize the location of a landfill, surface impoundment, waste pile, injection well, or land treatment facility over the Unconsolidated Quarternary Aquifer, or the recharge zone or streamflow

source zone of such aquifer, in the Rockaway River Basin, New Jersey (as such aquifer and zones are described in the Federal Register, January 24, 1984, pages 2946–2948); or

(2) place or authorize the placement of solid waste in a landfill, surface impoundment, waste pile, injection well, or land treatment facility over such aquifer or zone.

This subsection may be enforced under sections 309(a) and (b) of the Federal Water Pollution Control Act. For purposes of section 309(c) of such Act, a violation of this subsection shall be considered a violation of section 301 of such Act.

(d) STUDY OF SHORTAGES OF SKILLED PERSONNEL.—The Comptroller General shall study the problem of shortages of skilled personnel in the Environmental Protection Agency to carry out response actions under CERCLA. In particular the Comptroller General shall study—

(1) the types of skilled personnel needed for response actions for which there are shortages in the Environmental Protection Agency,

(2) the extent of such shortages,

(3) pay differential between the public and private sectors for the skilled positions involved in response actions,

(4) the extent to which skilled personnel of Federal and State governments involved in response actions are leaving their positions for employment in the private sector,

(5) the success of programs of the Department of Defense and the Office of Personnel Management in retaining skilled personnel, and

(6) the types of training required to improve the skills of employees carrying out response actions.

The Comptroller General shall complete the study required by this subsection and submit a report on the results thereof to Congress not later than 12 months after the date of the enactment of this Act.

(e) STATE REQUIREMENTS NOT APPLICABLE TO CERTAIN TRANSFERS.—No State or local requirement shall apply to the transfer and disposal of any hazardous substance or pollutant or contaminant from a facility at which a release or threatened release has occurred to a facility for which a final permit under section 3005(a) of the Solid Waste Disposal Act is in effect if the following conditions apply—

(1) Such permit was issued after January 1, 1983 and before November 1, 1984.

(2) The transfer and disposal is carried out pursuant to a cooperative agreement between the Administrator and the State.

The terms used in this section shall have the same meaning as when used in CERCLA.

SEC. 119. RESPONSE ACTION CONTRACTORS.

Title I of CERCLA is amended by adding the following new section after section 118:

"SEC. 119. RESPONSE ACTION CONTRACTORS.

"(a) Liability of Response Action Contractors.—

"(1) Response action contractors.—Notwithstanding section 114, a person who is a response action contractor with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a vessel or facility shall not be liable under this title, under any other Federal law, under the law of any State or political subdivision, or under common law to any person for injuries, costs, damages, expenses, or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release.

"(2) NEGLIGENCE, ETC.—Paragraph (1) shall not apply in the case of a release that is caused by conduct of the response action contractor which is negligent, grossly negligent, or which constitutes intentional misconduct.

"(3) EFFECT ON WARRANTIES.—Nothing in this subsection shall affect the liability of any person under any warranty under Federal, State, or common law.

"(4) GOVERNMENTAL EMPLOYEES.—A state employee or an employee of a political subdivision who provides services relating to response action while acting within the scope of his authority as a governmental employee shall have the same exemption from liability (subject to the other provisions of this section) as is provided to the response action contractor under this section.

"(b) SAVINGS PROVISIONS.—

"(1) LIABILITY OF OTHER PERSONS.—Nothing in this section shall affect the liability under this Act or under any other Federal or State law of any person, other than a response action contractor.

"(2) BURDEN OF PLAINTIFF.—Nothing in this section shall affect the plaintiff's burden of establishing liability under this title.

"(c) INDEMNIFICATION.—

"(1) In general.—The Administrator may agree to hold harmless and indemnify any response action contractor meeting the requirements of this subsection against any liability (including the expenses of litigation or settlement) for negligence arising out of the contractor's performance in carrying out response action activities under this title, unless such liability was caused by conduct of the contractor which was grossly negligent or which constituted intentional misconduct.

"(2) Applicability.—This subsection shall apply only with respect to a response action carried out under written agreement with—

"(A) the Administrator;

"(B) another Federal agency;

"(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 104(d)(1) of this title; or

"(D) any potentially responsible party, as defined by section 122.

"(3) Nonapplicability.—This subsection shall not be subject to section 1301 or 1341 of title 31 of the United States Code or section 3732 of the Revised Statutes (41 U.S.C. 11).

*"(4) R*EQUIREMENTS*.—An indemnification agreement may be provided under this subsection only if the Administrator determines that each of the following requirements are met:*

"(A) The liability covered by the indemnification agreement exceeds or is not covered by insurance available, at a fair and reasonable price, to the contractor at the time the contractor enters into the contract to provide response action, and adequate insurance to cover such liability is not generally available at the time the response action contract is entered into.

"(B) The response action contractor has made diligent efforts to obtain insurance coverage from non-Federal sources to cover such liability.

"(C) In the case of a response action contract covering more than one facility, the response action contractor agrees to continue to make such diligent efforts each time the contractor begins work under the contract at a new facility.

*"(5) L*IMITATIONS*.—*

*"(A) L*IABILITY COVERED*.—Indemnification under this subsection shall apply only to response action contractor liability which results from a release of any hazardous substance or pol-*

lutant or contaminant if such release arises out of response action activities.

"(B) DEDUCTIBLES AND LIMITS.—An indemnification agreement under this subsection shall include deductibles and shall place limits on the amount of indemnification to be made available.

"(C) CONTRACTS WITH POTENTIALLY RESPONSIBLE PARTIES.—

"(i) DECISION TO INDEMNIFY.—In deciding whether to enter into an indemnification agreement with a response action contractor carrying out a written contract or agreement with any potentially responsible party, the Administrator shall determine an amount which the potentially responsible party is able to indemnify the contractor. The Administrator may enter into such an indemnification agreement only if the Administrator determines that such amount of indemnification is inadequate to cover any reasonable potential liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. The Administrator shall make

the determinations in the preceding sentences (with respect to the amount and the adequacy of the amount) taking into account the total net assets and resources of potentially responsible parties with respect to the facility at the time of such determinations.

"(ii) CONDITIONS.—The Administrator may provide indemnification for the amount determined under clause (i) under an indemnification agreement referred to in clause (i) only if the contractor has exhausted all administrative, judicial, and common law claims for indemnification against all potentially responsible parties participating in the clean-up of the facility with respect to the liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. Such indemnification agreement shall require such contractor to pay any deductible established under subparagraph (B) before the contractor may recover any amount from the potentially responsible party or under the indemnification agreement.

"(D) RCRA FACILITIES.*—No owner or operator of a facility regulated under the Solid Waste Disposal Act may be indemnified under this subsection with respect to such facility.*

"(E) PERSONS RETAINED OR HIRED.*—A person retained or hired by a person described in subsection (f)(2)(A) shall be eligible for indemnification under this subsection only if the Administrator specifically approves of the retaining or hiring of such person.*

"(6) REGULATIONS.*—Within one year after the date of the enactment of this section, the Administrator shall promulgate regulations for carrying out the provisions of this subsection.*

"(7) STUDY.*—The Comptroller General shall conduct a study in the fiscal year ending September 30, 1989, on the application of this subsection, including whether indemnification agreements under this subsection are being used, the number of claims that have been filed under such agreements, and the need for this subsection. The Comptroller General shall report the findings of the study to Congress no later than September 30, 1989.*

"(d) EXCEPTION TO EXEMPTION.*—The exemption provided under subsection (a) and the authority of the Ad-*

ministrator to offer indemnification under subsection (c) shall not apply to any person covered by the provisions of paragraph (1), (2), (3), or (4) of section 107(a) with respect to the release or threatened release concerned if such person would be covered by such provisions even if such person had not carried out any actions referred to in subsection (e) of this section.

"(e) DEFINITIONS.—For purposes of this section—

"(1) RESPONSE ACTION CONTRACT.—The term 'response action contract' means any written contract or agreement entered into by a response action contractor (as defined in paragraph (2)(A) of this subsection) with—

"(A) the Administrator;

"(B) any other Federal agency;

"(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 104(d)(1) of this Act; or

"(D) any potentially responsible party;

to provide any response action under this Act with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, *equipment, or any ancillary services thereto for such facility.*

"(2) RESPONSE ACTION CONTRACTOR.—The term 'response action contractor' means—

"(A) any—

"(i) person who enters into a response action contract with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility and is carrying out such contract; and

"(ii) person, public or nonprofit private entity, conducting a field demonstration pursuant to section 311(b); and

"(B) any person who is retained or hired by a person described in subparagraph (A) to provide any services relating to a response action.

"(3) INSURANCE.—The term 'insurance' means liability insurance which is fair and reasonably priced, as determined by the Administrator, and which is made available at the time the contractor enters into the response action contract to provide response action.

"(f) COMPETITION.—To protect the health and safety of the public and to assure the selection of technically superior response action contractors, no potential offeror of a bid or proposal for a contract, subcontract, or cooperative agree-

ment to be performed and funded under the authority of this Act shall be denied the opportunity to compete for such contracts. Response action contractors and subcontractors for program management, construction management, architectural and engineering, surveying and mapping, and related services shall be selected in accordance with title IX of the Federal Property and Administrative Services Act of 1949. The Federal selection procedures or equivalent State requirements shall apply to appropriate contracts negotiated by all governmental agencies involved in carrying out this Act under memoranda of understanding, State cooperative agreements, or other means. Such procedures (or equivalent requirements) shall be followed by response action contractors and subcontractors.

"(g) Nothing in this Act shall limit the Administrator in taking such action as may be necessary to assure continuous remedial action or to institute interim remedial action when it becomes necessary to reopen bidding or otherwise recontract for the performance of remedial action.".

SEC. 120. FEDERAL FACILITIES.

(a) IN GENERAL.—Title I of CERCLA is amended by adding the following new section after section 119:

"SEC. 120. FEDERAL FACILITIES.

"(a) APPLICATION OF ACT TO FEDERAL GOVERNMENT.—

"(1) IN GENERAL.—Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107 of this Act. Nothing in this section shall be construed to affect the liability of any person or entity under sections 106 and 107.

"(2) APPLICATION OF GUIDELINES, ETC., TO FEDERAL FACILITIES.—All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable with respect to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the same extent as such guidelines, rules, regulations, and criteria are applicable with respect to other facilities. No department, agency, or instrumentality of the United States may adopt or

utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act.

"(3) EXCEPTIONS.—This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to financial responsibility. Nothing in this Act shall be construed to require a State to comply with section 104(c)(3) in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

"(4) STATE LAWS.—State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States when such facilities are not included on the National Priorities List. The preceding sentence shall not apply to the extent a State law would apply any standard or requirement to such facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by any such department, agency, or instrumentality.

"(b) NOTICE.—Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act (in addition to the information required under section 3016(a)(3) of such Act) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

"(c) FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET.—

"(1) ESTABLISHMENT.—The Administrator shall establish a special Federal agency hazardous waste compliance docket for each department, agency, or instrumentality of the United States which shall contain each of the following:

"(A) The inventory required to be submitted by the department, agency, or instrumentality in accordance with section 3016 of the Solid Waste Disposal Act and subsection (b) of this section.

"(B) Information submitted by the department, agency, or instrumentality under section 3005 or 3010 of such Act.

"(C) Information submitted by the department, agency, or instrumentality under section 103 of this Act.

"(2) INSPECTION.—The docket established under this subsection shall be available for public inspection at reasonable times. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the docket under this subsection.

"(3) PERIODIC NOTICES.—Six months after establishment of the docket under this subsection and every six months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the preceding six-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket.

"(d) EVALUATION.—

"(1) DEADLINE.—Not later than January 31, 1987, where the Administrator determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment, the Administrator shall evaluate each facility included in the docket established

under subsection (c) in accordance with the criteria established under the National Contingency Plan for determining priorities among releases for inclusion on the National Priorities List. Upon the receipt of a petition from the Governor of any State, the Administrator shall make such an evaluation of any facility included in the docket.

"(2) DEADLINE FOR INCLUSION.—Within 12 months after completion of the evaluation of a facility, the Administrator shall include the facility on the National Priorities List if the facility meets the criteria for inclusion on such list. Such criteria shall be applied in the same manner as the criteria are applied to facilities which are owned or operated by other persons.

"(e) REQUIRED ACTION BY DEPARTMENT.—

"(1) RIFS.—Not later than six months after the inclusion of any facility on the National Priorities List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator, commence a remedial investigation and feasibility study for such facility. In the case of any facility which is listed on such list before the date of the enactment of this section, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Ad-

ministrator, commence such an investigation and study for such facility within one year after such date of enactment.

"(2) COMMENCEMENT OF REMEDIAL ACTION; INTERAGENCY AGREEMENT.—The Administrator shall review the results of each investigation and study conducted as provided in paragraph (1). Within 180 days thereafter, the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the investigation and study. For purposes of completing the remedial action as promptly as practicable, each department, agency, or instrumentality shall request adequate funding in the President's annual budget submittal to the Congress. For purposes of public participation in accordance with section 117, the proposal of a plan for remedial action in an interagency agreement shall be treated as the proposal of a plan for remedial action and the adoption of such an agreement shall be treated as the adoption of a final plan.

"(3) CONTENTS OF AGREEMENT.—Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

"(A) A review of alternative remedial actions and selection of a remedial action plan by the Administrator.

"(B) A schedule for the completion of each such remedial action.

"(C) Arrangements for long-term operation and maintenance of the facility.

"(4) ANNUAL REPORT.—Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to, each of the following items:

"(A) A report on the progress in reaching interagency agreements under this section.

"(B) The specific cost estimates and budgetary proposals involved in each interagency agreement.

"(C) A report on progress in conducting investigations and studies under paragraph (1).

"(D) A report on progress in conducting remedial actions.

"(E) A report on progress in conducting remedial action at facilities which are not listed on the National Priorities List.

"(5) SETTLEMENTS WITH OTHER PARTIES.—If the Administrator, in consultation with the head of the relevant department, agency, or instrumentality of the United States, determines that remedial investigations and feasibility studies or remedial action will be done properly at the Federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of this subsection, the Administrator may enter into an agreement with such party under section 122.

"(f) TRANSFER OF AUTHORITIES.—Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person.

"(g) PROPERTY TRANSFERRED BY FEDERAL AGENCIES.—

"(1) NOTICE.—After the last day of the six-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any federally regulated hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

"(2) FORM OF NOTICE; REGULATIONS.—Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after the date of the enactment of this subsection but not later than 18 months after such date of enactment, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

"(3) CONTENTS OF CERTAIN DEEDS.—After the last day of the six-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain—

"(A) to the extent such information is available on the basis of a complete search of agency files—

"(i) a notice of the type and quantity of such hazardous substances,

"(ii) notice of the time at which such storage, release, or disposal took place, and

"(iii) a description of the remedial action taken, if any, and

"(B) a covenant warranting that—

"(i) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and

"(ii) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States.

The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party (as defined in section 122(j)) with respect to such real property.

"(h) OBLIGATIONS UNDER SOLID WASTE ACT.—Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act (including corrective action requirements).

"(i) STATE COORDINATOR.—A State may request and be granted by the Administrator the role of on-scene coordinator for Federal facility projects within its boundaries. The necessary and reasonable expenses of the on-scene coordinator shall be paid to the State by the Agency.

"(j) NATIONAL SECURITY.—

"(1) SITE SPECIFIC PRESIDENTIAL ORDERS.—The President may issue such orders regarding response actions at any specified site or facility of the Department of Energy or the Department of Defense as may be necessary to protect the national security in-

terests of the United States at that site or facility. Such orders may include, where necessary to protect such interests, an exemption from any requirement contained in this title or under title III of the Superfund Amendments of 1985 with respect to the site or facility concerned. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed 1 year. Additional exemptions may be granted each upon the President's issuance of a new order under this paragraph for the site or facility concerned. Each such additional exemption shall be for a specified period which may not exceed 1 year. It is the intention of the Congress that whenever an exemption is issued under this paragraph the response action shall proceed as expeditiously as practicable. The Congress shall be notified periodically of the progress of any response action with respect to which an exemption has been issued under this paragraph.

"(2) CLASSIFIED INFORMATION.—Notwithstanding any other provision of law, all requirements of the Atomic Energy Act and all Executive orders concern-

ing the handling of restricted data and national security information, including 'need to know' requirements, shall be applicable to any grant of access to classified information under the provisions of this Act or under title III of the Superfund Amendments of 1985.".

(b) LIMITED GRANDFATHER.—Section 120(a) of CERCLA shall not apply to any response action or remedial action for which a plan is under development by the Department of Energy on the date of the enactment of this Act with respect to facilities—

(1) owned or operated by the United States and subject to the jurisdiction of such Department,

(2) located in St. Charles and St. Louis counties, Missouri, or the city of St. Louis, Missouri, and

(3) published in the National Priorities List.

In preparing such plans, the Secretary of Energy shall consult the Administrator of the Environmental Protection Agency.

SEC. 121. CLEANUP STANDARDS.

Title I of CERCLA is amended by adding the following new section after section 120:

"SEC. 121. CLEANUP STANDARDS.

"(a) BASIC REQUIREMENTS.—The Administrator shall select appropriate cost-effective remedial actions to be

carried out under section 104 or secured under section 106. Such actions—

"(1) shall be in accordance with the National Contingency Plan,

"(2) shall be in accordance with the requirements of this section, and

"(3) shall require that level or standard of control of each hazardous substance or pollutant or contaminant at the facility which is necessary to protect human health and environment.

"(b) PERMANENT SOLUTIONS.—

"(1) GENERAL REQUIREMENT.—If a permanent solution meets the requirements of subsection (a) with respect to a facility and such solution is feasible and achievable, the Administrator shall, to the maximum extent practicable, select such solution as the remedial action for the facility.

"(2) DETERMINATION OF PRACTICABILITY.—For purposes of this section, the Administrator shall determine whether or not a remedial action is practicable by taking into consideration the following factors, among others: availability of technology, installation period, uncertainties related to level of performance of the solution or remedial action, level of public support for the solution or remedial action, and whether or not

the solution or remedial action has been achieved in practice at any other facility or site which has characteristics similar to the facility or site concerned.

"(c) NONPERMANENT MEASURES.—If the Administrator determines that a permanent solution is not feasible and achievable with respect to any release or threatened release of a hazardous substance or pollutant or contaminant, the Administrator shall provide such remedial action as he deems necessary to protect human health and the environment in accordance with the provisions of this section.

"(d) TREATMENT OF SITES AND FACILITIES WITH NONPERMANENT SOLUTIONS.—

"(1) SEPARATE CATEGORY ON NPL.—Whenever a permanent solution has not been selected according to the requirements of subsections (a) and (b) with respect to a release at any site or facility, the site or facility shall be placed in a separate category on the National Priorities List labelled 'Interim Category'.

"(2) PERIODIC REVIEW.—The Administrator shall assure (in cooperation with the State) periodic monitoring and shall periodically review each facility for which the remedy selected under this section does not provide a permanent solution. The review of each site or facility in the Interim Category on the National Priorities List shall be no less frequent than every 5

years following placement in such category. The purpose of such monitoring and review shall be to determine each of the following:

"(A) Whether or not a permanent solution is available for such facility in accordance with subsections (a) and (b).

"(B) Whether or not the remedy selected is adequately protecting human health and the environment.

"(3) PERMANENT SOLUTION AVAILABLE.—If the Administrator determines that a permanent solution is available for the facility in accordance with subsections (a) and (b), the Administrator shall require that remedial action be undertaken to implement such solution unless the Administrator determines that the existing remedy being implemented at the facility is adequately protecting human health and the environment.

"(4) ADDITIONAL MEASURES.—If the Administrator determines that a permanent solution is not available for the facility in accordance with subsections (a) and (b) and that the remedy implemented at the facility is not adequately protecting human health and the environment, the Administrator shall take or require to be taken such additional remedial action as

may be necessary to protect human health and the environment.

"(5) ABOVE-GROUND STRUCTURES.—If the Administrator determines that a permanent solution is not feasible and achievable, the Administrator shall consider remedial actions in which hazardous substances and pollutants and contaminants are securely contained in such above-ground engineered structures.

"(e) SELECTION OF REMEDIAL ACTION.—In evaluating alternative remedial actions (including whether to utilize onsite or offsite remedial actions), the Administrator shall specifically assess the long-term effectiveness of various alternatives, including an assessment of permanent solutions and alternative treatment technologies and resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant, taking into account each of the following:

"(1) The long-term uncertainties associated with land disposal.

"(2) The goals, objectives, and requirements of the Solid Waste Disposal Act.

"(3) The persistence, degradability in nature, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents.

"(4) The potential threat to human health and the environment associated with excavation, transportation, and redisposal.

"(5) Short- and long-term potential for adverse health effects from human exposure.

"(6) Long-term maintenance costs.

"(f) PREFERRED ACTIONS.—Remedial actions which significantly reduce the volume, toxicity, or mobility of the hazardous substance or pollutant or contaminant are to be preferred over remedial actions which do not result in such reductions.

"(g) ONSITE REMEDIAL ACTION.—

"(1) APPLICABILITY.—This subsection shall apply only to hazardous substances and pollutants and contaminants which remain onsite.

"(2) APPLICATION OF OTHER FEDERAL ENVIRONMENTAL STANDARDS AND CRITERIA.—If any—

"(A) standard under one or more provisions of the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Federal Water Pollution Control Act, or the Solid Waste Disposal Act, or

"(B) water quality criteria under any provision of the Federal Water Pollution Control Act, *is legally applicable to the hazardous substance or pollutant or contaminant concerned or is relevant and appropriate under the circumstances of the release or threatened release of such hazardous substance or pollutant or contaminant, the remedial action selected under section 104 or secured under section 106 shall require, at the completion of the remedial action, a level or standard of control for such hazardous substance or pollutant or contaminant which is at least equivalent to such legally applicable or relevant and appropriate standards or criteria. In determining whether or not any water quality criteria under the Federal Water Pollution Control Act is relevant and appropriate under the circumstances of the release or threatened release of a hazardous substance or pollutant or contaminant, the Administrator shall consider the following: the designated or potential use of the surface or groundwater, the environmental media affected, the purposes for which such criteria were developed, and the latest information available. In determining a level or standard of control for a hazardous substance or pollutant or contaminant the Administrator shall consider any tolerance level established under the Federal Food, Drug, and Cosmetic Act which is applicable* *to that hazardous substance or pollutant or contaminant.*

"(3) MORE STRINGENT STATE STANDARDS AND STATE SITING STANDARDS OR LAWS.—In any case in which there is a promulgated standard under a State environmental law which is—

"(A) legally applicable to the hazardous substance or pollutant or contaminant concerned or relevant and appropriate under the circumstances of the release or threatened release of such hazardous substance or pollutant or contaminant; and

"(B) more stringent than the standard which would otherwise be selected under this section;

and there is a cost-effective remedial action which will achieve such State standard and meets the requirements of this section, the provisions of subsection (j) shall govern the use of such State standard for purposes of remedial action selected under section 104 or secured under section 106. In any case in which there is a promulgated State siting standard or law which is applicable to the remedial action, the provisions of subsection (j) shall govern the use of such State siting standard or law, except where such State standard or law may effectively result in the prohibition of land *disposal of a hazardous substance, pollutant or contaminant.*

"(4) CONTAINMENT.—Where the remedial action selected under section 104 or secured under section 106 at any facility does not include the removal of all hazardous substances and pollutants and contaminants from such facility, any remedial action providing for the containment of any such substance or pollutant or contaminant at such facility shall comply with the standards applicable to facilities required to obtain permits under section 3005 of the Solid Waste Disposal Act.

"(5) CONTAMINATION FROM OTHER SOURCES.—The level or standard of control required in accordance with this subsection shall be required only regarding remedial actions taken with respect to the release or threatened release of a hazardous substance or pollutant or contaminant from the facility concerned and shall not be applicable to contamination from other sources.

"(h) OFFSITE REMEDIAL ACTION.—

"(1) TRANSFER TO A COMPLYING FACILITY.—In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant offsite, such hazardous substance or

pollutant or contaminant shall only be transferred to a facility which is operating in compliance with sections 3004 and 3005 of the Solid Waste Disposal Act (or, where applicable, in compliance with the Toxic Substances Control Act). Such substance or pollutant or contaminant may be transferred to a land disposal facility only if the Administrator determines that both of the following requirements are met:

"(A) The unit to which the hazardous substance or pollutant or contaminant is transferred is not releasing any hazardous waste, or constituent thereof, into the groundwater or surface water.

"(B) All such releases from other units at the facility are being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act.

"(2) DEFINITION OF LAND DISPOSAL.—As used in this subsection, (A) the term 'land disposal' has the meaning provided by section 3004 of the Solid Waste Disposal Act, and (B) the term 'hazardous waste' means hazardous waste listed or identified under section 3001 of that Act.

"(i) WAIVERS.—

"(1) IN GENERAL.—The Administrator may waive the application of the requirements of subsection

(g) with respect to any facility and select alternative remedial or abatement action which does not comply with such requirements if the Administrator makes any of the following findings:

"(A) The Administrator finds that such alternative remedial or abatement action will provide protection of human health and the environment substantially equivalent to the remedial or abatement action which would be necessary to comply with such requirements.

"(B) The Administrator finds that compliance with such requirements at that facility will result in greater risk to human health and the environment than alternative options. This finding shall be on the basis of a quantitative assessment to the maximum extent possible.

"(C) The Administrator finds that compliance with such requirements is technically impracticable from an engineering perspective.

"(D) The Administrator finds that compliance with such requirements at that facility will consume a disproportionate share of the Fund, taking into account the size and complexity of the facility and benefits to human health and the environment which may be obtained through other

uses under this Act of the sums available in the Fund which would be expended to comply with such requirements.

"(E) The Administrator finds and certifies in writing that compliance with such requirements will require the expenditure of private party resources, which expenditure would substantially exceed the expenditures associated with the remedy which would have been selected by the Administrator if the remedy had been financed by the Fund and if the Administrator, without regard to amounts in the Fund, had invoked the waiver under paragraph (4). In applying this subparagraph, the Administrator shall consider the Fund as having a level of funding equivalent to that authorized.

"(2) PRIVATELY FINANCED ACTIONS.—A finding under subparagraph (A), (B), or (C) of paragraph (1) may also be made with respect to remedial action financed in whole or in part by private parties. In such case, the finding shall be made on the basis of the same considerations as would be used with respect to remedial action financed by the Fund.

"(3) RESTRICTIONS.—

"(A) PROHIBITION ON VIOLATION OF CERTAIN LAWS.—No waiver may be granted under this subsection if it would result in a violation of any of the following: the Federal Water Pollution Control Act, the Marine Protection, Research, and Sanctuaries Act of 1972, the Clean Air Act, and the Safe Drinking Water Act.

"(B) SUBPARAGRAPH (E) WAIVERS.—The Administrator may not grant a waiver under subparagraph (E) of paragraph (1) unless—

"(i) the Administrator has first promulgated final regulations establishing procedures for implementing such subparagraph, including health and environmental impact procedures; and

"(ii) the Administrator explains why granting such waiver is in the public interest.

"(j) ONSITE CLEANUP; PERMITS; STATE STANDARDS.—

"(1) FEDERAL AND STATE PERMITS.—This paragraph applies to any remedial action selected by the Administrator under this Act which does not involve the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or

threatened release occurs to an offsite facility. No Federal or State permits shall be required for such remedial actions other than permits under the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, and State groundwater laws, if any. For purposes of expediting such remedial actions, the Administrator may, in consultation with the States, establish consolidated procedures applicable to the issuance of Federal and State permits. No permits shall be required under Federal, State, or local law for any removal action under emergency circumstances under this Act.

"(2) LIMITATIONS REGARDING STATE PERMITS.—

"(A) STANDARDS IDENTIFIED IN NOTIFICATION.—Permits may be required only for those State standards which the State identifies in its notification to the Administrator during the remedial investigation and feasibility study.

"(B) DEADLINE FOR ISSUANCE OF STATE PERMITS.—If a State permit is not issued before completion of the final remedial engineering design, construction and implementation of the remedy shall proceed. The State shall have an additional 30 days to issue the permit. If the State

does not issue the permit within such period, the requirement for its issuance shall be deemed to be waived. The State may require the party responsible for obtaining any permit to file an application for such permit at any reasonable time after the selection of the remedial action.

"(C) RELATIONSHIP TO REMEDIAL ACTION PLAN.—The permit shall conform to and may not modify the terms of the remedial action plan. Permits may not significantly increase the estimated costs of the action. All conflicts between the provisions of the Acts referred to in subparagraph (A) and this Act shall be resolved in favor of this Act. There shall be no separate State or Federal procedures under any other laws for obtaining or reviewing the permit. Only the procedures provided for under this Act shall apply for such purposes. Nothing in this subparagraph shall be deemed to affect any requirements under the Federal Water Pollution Control Act.

"(D) INJUNCTIONS DURING REVIEW.—Remedial action which is unrelated to or not inconsistent with the State permit shall not be enjoined pending a proceeding to review the permit.

"(E) JURISDICTION TO REVIEW.—The appropriate Federal district court shall have exclusive jurisdiction to resolve all conflicts, disputes, and disagreements over the permit. The court shall not have jurisdiction to review the selection of the remedial action during an action to enforce or review the permit. Only the State attorney general or the Administrator shall have authority to enforce the permits.

"(3) REGULATIONS FOR STATE INVOLVEMENT.—The Administrator shall promulgate regulations providing for substantial and meaningful involvement by each State in initiation, development, and selection of remedial action to be undertaken in that State. The regulations, at a minimum, shall include each of the following:

"(A) State involvement in decisions whether to perform a preliminary assessment and site inspection.

"(B) Allocation of responsibility for hazard ranking system scoring.

"(C) State concurrence in deleting sites from the National Priorities List.

"(D) State participation in long-term planning process for all remedial sites within the State.

"(E) A reasonable opportunity for States to review and comment on each of the following:

"(i) The remedial investigation and feasibility study and all data and technical documents leading to its issuance.

"(ii) The planned remedial action identified in the remedial investigation and feasibility study.

"(iii) The engineering design following selection of the final remedial action.

"(iv) Other technical data and reports relating to implementation of the remedy.

"(v) Any decision by the Administrator to exercise the waiver authority of subsection (i).

"(F) Notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State and an opportunity to participate in such negotiations. Such regulations shall also provide for the States to be given notice and an opportunity to comment on the Administrator's proposed plan for

remedial action as well as on alternative plans under consideration. The Administrator's final decision regarding the selection of remedial action shall be accompanied by a response to the comments submitted by the State. Such response shall be provided to the State.

"(G) Prompt notice and explanation of each proposed action, including an explanation regarding any decision under paragraph (4) on compliance with promulgated State standards to the State in which the facility is located.

"(4) STATE SUBSTANTIVE STANDARDS.—The State standards referred to in subsection (g)(3) shall apply to remedial actions selected under section 104 or secured under section 106 unless the Administrator determines that one or more of the following circumstances exists:

"(A) The State has agreed with a decision by the Administrator not to apply the State standard.

"(B) The remedial action selected provides protection of public health and the environment that is substantially equivalent to that provided by the State standard.

"(C) The State has not consistently applied the standard (or planned to apply the standard) in similar circumstances at other remedial actions within the State.

"(D) The Administrator exercises one of the waivers under subsection (i) with respect to the State standard. No waiver under subsection (i)(1)(D) shall apply at any facility owned or operated by an agency or instrumentality of the United States. If the Administrator determines, under this paragraph not to apply a State standard, the application of the State standard shall be determined in accordance with paragraph (5), (6), or (7).

"(5) STATE CONCURRENCE PROCEDURE FOR FUND-FINANCED REMEDIAL ACTIONS.—

"(A) APPLICATION OF PARAGRAPH.—This paragraph applies to remedial action undertaken pursuant to section 104.

"(B) OPPORTUNITY TO CONCUR.—Within 30 days of the publication of the Administrator's final remedial action plan, the State shall notify the Administrator that it concurs or does not concur with any decision of the Administrator under paragraph (4) not to comply with a promul-

gated State standard or siting requirement. If the State concurs in the decision, the remedial action selected by the Administrator shall proceed through completion. If the State fails to act within 30 days after the close of the comment period, such failure shall be deemed concurrence for purposes of this paragraph.

"(C) STATE PAYMENT.—If the State notifies the Administrator within 30 days of the close of the comment period that it does not concur with the decision under paragraph (4) not to comply with a promulgated State standard or siting requirement, and within 60 days after close of the comment period provides assurances deemed adequate by the Administrator that the State will pay or assure payment of the additional costs attributable to compliance with the State standard or requirement, as determined by the Administrator, the remedial action shall comply with such State standard or requirement and shall proceed through completion. If the State fails to provide such assurances within 60 days, the remedial action selected by the Administrator shall proceed through completion.

"(D) ENFORCEMENT.—The State may enforce any Federal or State standard or requirement to which the remedial action is required to conform under this Act in the United States district court in which the facility concerned is located.

"(E) COST RECOVERY.—In any action under section 107 to recover from responsible parties any additional costs paid by the State to have a remedial action conform to a State standard, the State may recover such additional costs if it establishes, on the administrative record, that the Administrator's decision not to require the remedial action to conform to the State standard was not supported by substantial evidence.

"(6) STATE CONCURRENCE PROCEDURE FOR ACTIONS UNDER SECTION 106.—

"(A) APPLICATION OF PARAGRAPH.—This paragraph shall apply to remedial actions secured under section 106.

"(B) OPPORTUNITY TO CONCUR OR REFUSE TO CONCUR.—Within 30 days of the lodging of the consent decree, the Administrator shall provide an opportunity for the State to concur or not to concur that the remedial action *plan embodied in the consent decree properly takes State standards into account. If the State concurs, the State may become a signatory to the consent decree.*

"(C) STATE NONCONCURRENCE.—If the State does not concur in the remedial action plan embodied in the consent decree on the basis that State standards have not been properly taken into account, and the State desires to have the remedial action conform to such standards, the State may intervene in the action under section 106, as a matter of right, prior to entry of the consent decree to seek to have the action conform to such State standards. The remedy shall conform to the State standard if the State establishes, on the administrative record, that the Administrator's decision not to have the remedial action conform to the State standard was not supported by substantial evidence. If the court determines that the remedy shall conform to a State standard, the consent decree shall be so modified and the State may become a signatory to the decree. If the court determines that the remedy need not conform to the State standard, and the State pays or assures payment of the additional costs attributable to

meeting the State standard, the consent decree shall be modified to incorporate the State standard, and the State shall become a signatory to the decree.

"(D) AUTHORITY OF EPA.—The Administrator may conclude settlement negotiations and enter into consent decrees with potentially responsible parties without State concurrence.

"(E) CONDITIONS.—The Administrator and the State may request the court to include reasonable conditions in any consent decree under section 106 to assure that the remedial design and its implementation meet the conditions and requirements of the remedial action plan.

"(7) STATE CONCURRENCE PROCEDURE FOR REMEDIAL ACTIONS AT FEDERAL FACILITIES.—

"(A) APPLICATION OF PARAGRAPH.—This paragraph shall apply to remedial action at facilities owned or operated by an agency or instrumentality of the United States.

"(B) OPPORTUNITY TO CONCUR OR NOT TO CONCUR.—The State may participate in the development and selection of the remedy and seek to have the remedial action conform to State standards. Within 30 days of the publication of the

Administrator's final remedial action plan, the State may concur or not concur that the Administrator has taken proper account of State standards in the final remedial action. If the State concurs, or does not act within 30 days, the remedial action may proceed.

"(C) STATE NONCONCURRENCE.—If the State does not concur as provided in subparagraph (B), and desires to have the remedial action conform to the State standard, the State may maintain an action as provided in subparagraph (D).

"(D) REVIEW OF EPA DECISION.—

"(i) AUTHORITY TO BRING ACTION.—If the Administrator has notified the State of its decision not to require a remedial action which conforms to a State standard, the State may bring an action within 30 days of such notification for the sole purpose of determining whether the Administrator's decision not to adopt the State standard is supported by substantial evidence. Such action shall be brought in the United States district court in the district in which the facility is located.

"(ii) REJECTION OF EPA DECISION.—If the State establishes, on the administrative record, that the Administrator's decision not to adopt a State standard is not supported by substantial evidence, the remedial action shall be modified to conform to such standard.

"(iii) EPA DECISION UPHELD.—If the State fails to establish that the Administrator's decision was not supported by substantial evidence and if the State pays, within 60 days of judgment, the additional costs attributable to meeting the State standard, the remedial action shall be selected to meet the State standard. If the State fails to pay within 60 days, the remedial action that does not meet the State standard shall proceed through completion.

"(E) ENFORCEMENT.—The State may enforce any Federal or State standard or requirement to which the remedial action is required to conform under this Act in the United States district court in the district in which the facility is located.

"(F) INJUNCTIONS.—Nothing in this Act precludes, and the court shall not enjoin, the Federal agency from taking any remedial action unrelated to or not inconsistent with the State standard.

"(G) CONDITIONS.—During an action brought by the State regarding the Administrator's notification of the State requirement to pay the additional costs associated with meeting the State standard, the State may also request the court to establish reasonable conditions to assure that the remedial design and implementation meets the conditions and requirements of the remedial action plan.

"(8) CORRECTIVE ACTION AT FEDERAL FACILITIES.—The waiver under this subsection of any requirement for a permit shall not be construed to exempt any solid waste management unit within the boundaries of a facility owned or operated by a department, agency, or instrumentality of the United States from the corrective action required by section 3004(u) of the Solid Waste Disposal Act for releases of hazardous waste or constituents, unless such unit is within the scope of the response action taken at a site on the National Priorities List under this Act.

"(9) ATTORNEY AND WITNESS FEES.—Whenever a State recovers its additional costs under this subsection from any responsible person, such person shall be liable for the costs incurred by the State in such action, including reasonable attorney and witness fees. Whenever the court upholds a determination under paragraph (4), the State which brought the action under this subsection shall be liable for the costs incurred by the Administrator and the responsible person in such action, including reasonable attorney and witness fees.

"(10) SAVINGS PROVISIONS.—(A) Nothing in this section shall be deemed to affect the authority of any State to undertake a response action under this Act.

"(B) Nothing in this section shall affect the authority of any State to impose, after remedial action is completed, any requirement (including a fee) with respect to any operation and maintenance activities required with respect to a hazardous substance or pollutant or contaminant.

"(11) STATE ENVIRONMENTAL IMPACT REQUIREMENTS.—Prior to commencement of a remedial investigation and feasibility study, the Administrator shall notify the State of such action. If within 60 days

thereafter, the State notifies the Administrator of any State procedural requirements which would be applicable under State statutes requiring preparation of environmental impact statements, the Administrator shall, in consultation with the State, establish functionally equivalent procedures governing the preparation of such investigation and study which adopt such State requirements unless the State waives such requirements. Compliance with this subsection shall be deemed to be in compliance with such State environmental impact statutes.

"(12) OFFSITE.—Nothing in this subsection shall be construed to affect any requirement of Federal, State, or local law to the extent that such requirement applies to response action involving the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to another facility.

"(13) CONSOLIDATION OF PERMIT PROCEDURES.—If one or more State or Federal permits are required for any response action, the Administrator shall consolidate the procedures, including any requirements for public participation, of such permits with the procedures under this Act. Nothing in this paragraph

shall affect the substantive requirements of such permits.

"(k) DESTRUCTION OF DIOXIN WASTES.—

"(1) TREATMENT TECHNOLOGY.—With respect to any remedial action which involves treatment of a hazardous substance or pollutant or contaminant containing chlorinated or halogenated dioxins or chlorinated or halogenated dibenzofurans, the Administrator shall, to the maximum extent practicable, require treatment technology that provides each of the following:

"(A) A destruction and removal efficiency meeting or exceeding 99.9999 percent.

"(B) A treatment process which minimizes accidental emissions of chlorinated or halogenated dioxins, dibenzofurans, and other highly toxic materials to the environment.

"(C) Protection against emissions of any hazardous substance or pollutant or contaminant into the air during normal operation and equivalent protection during nonsteady operations including start-up, shut-down, and power failures.

"(D) Protection against secondary formation of halogenated dioxins and dibenzofurans.

"(2) REQUIREMENTS.—The requirements specified in paragraph (1) shall not apply if the Administrator determines that—

"(A) an alternative method of treatment or disposal provides comparable or greater protection of human health and the environment, or

"(B) there will be no human exposure to the hazardous substance or pollutant or contaminant containing chlorinated or halogenated dioxins or chlorinated or halogenated dibenzofurans.

"(l) VALUE ENGINEERING REVIEW.—In any evaluation under this section of the cost effectiveness of a response action, the Administrator shall require value engineering review in accordance with this subsection. The Administrator shall require value engineering review for any response action to be carried out under this Act by the United States, a State, or a political subdivision of a State if the cost of the response action, including the cost of removal and construction related to hazardous substances and pollutants and contaminants, and including the cost of operation and maintenance, is projected to exceed $4,000,000. For purposes of this subsection, the term 'value engineering review' means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost

saving without sacrificing the reliability or efficiency of the project.

"(m) PERMITS FOR ONSITE CLEANUP UNDER STATE AUTHORITY.—In the case of remedial actions specifically involving mobile incinerator units in a State which has specifically authorized the use of such units (as of the date of enactment of this section), if such remedial actions are undertaken by the State under the authority of a State Superfund law or equivalent authority, the State may waive any permit requirement under subtitle C of the Solid Waste Disposal Act which would be otherwise applicable to such action to the extent that the following conditions are met:

"(1) The State files notice with the Administrator of its intention to waive the permit requirement and the Administrator does not object to such waiver within 120 days.

"(2) The incinerator does not involve the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to an offsite facility.

"(3) The remedial action provides each of the following:

"(A) changes in the character or composition of the hazardous substance or pollutant or con-

taminant concerned so that it no longer presents a risk to public health.

"(4) Protection against accidental emissions during operation.

"(5) Protection of public health considering the multimedia impacts of the treatment process.

"(6) The State provides procedures for public participation regarding the response action which are at least equivalent to the level of public participation procedures applicable under this Act and under the Solid Waste Disposal Act.

The waiver of any permit requirement under this subsection shall not be construed to waive any standard or level of control which is applicable to any hazardous substance or pollutant or contaminant involved in the remedial action involved and which would otherwise be contained in the permit. Such waiver of any permit requirement under subtitle C of the Solid Waste Disposal Act shall only apply to the extent that the facility or remedial action involves the onsite treatment with a mobile incineration unit of waste present at such site. The waiver shall not apply to any other regulated or potentially regulated activity, including the use of the mobile incineration unit for actions not authorized by the State. The authority of this subsection shall terminate at the end of three years, unless the State shall demonstrate, to *the satisfaction of the Administrator, that the operation of mobile incinerators in the State has sufficiently protected public health and the environment and is consistent with the criteria required for a permit under subtitle C of the Solid Waste Disposal Act.".*

SEC. 122. SETTLEMENTS.

Title I of CERCLA is amended by adding the following new section after section 121:

"SEC. 122. SETTLEMENTS.

"(a) EPA AUTHORITY TO ENTER INTO AGREEMENTS.—The Administrator, in his discretion, may enter into an agreement with any person (including the owner or operator of the facility from which a release or substantial threat of release emanates, or any other potentially responsible person), to perform any action described in subsection (b) of section 104 or in subsection (a) of section 106 if the Administrator determines that such action will be done properly by such person. As a matter of public policy the Administrator is encouraged to facilitate agreements under this Act that are in the public interest and consistent with the National Contingency Plan in order to expedite effective site cleanups and minimize litigation. If the Administrator decides not to use the procedures in this section, the Administrator shall notify in writing potentially responsible parties at the facility of such decision and the reasons why use

of the procedures is inappropriate. The decision of the Administrator not to use the procedures in this section is not subject to judicial review.

"(b) Agreements With Potentially Responsible Parties.—

"(1) Mixed Funding.—An agreement under this section may provide that the Administrator will reimburse the parties to the agreement from the Fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform but which the Administrator has agreed to finance.

"(2) Reviewability.—The Administrator's decisions regarding the availability of fund financing under this subsection shall not be subject to judicial review under subsection (d).

"(3) Retention of funds.—If, as part of any agreement, the Administrator will be carrying out any action and the parties will be paying amounts to the Administrator, the Administrator may, notwithstanding any other provision of law, retain and use such amounts for purposes of carrying out the agreement.

"(c) Effect of Agreement.—

"(1) Limitation of liability.—Whenever the Administrator has entered into an agreement under this section, the liability under this Act of each party

to the agreement with respect to liability, including any future liability, arising from the release or threatened release that is the subject of the agreement shall be limited as provided in the agreement in accordance with subsection (f). The agreement may provide that a settling parties' future liability, if any, shall not exceed the percentage of liability agreed to by such party in the agreement. Nothing in this paragraph shall limit or otherwise affect the authority of any court to review in the consent decree process under subsection (d) any limitation on liability contained in an agreement under this section. In determining the extent to which the liability of parties to an agreement shall be limited under this subsection, the Administrator shall be guided by the principle that a more complete limit of liability shall be given for a more permanent remedy proposed by such parties.

"(2) ACTIONS AGAINST OTHER PERSONS.—If an agreement has been entered into under this section, the Administrator may take any action under section 106 against any person who is not a party to the agreement, once the period for submitting a proposal under subsection (e)(2)(B) has expired. Nothing in this section shall be construed to affect either of the following:

"(A) The liability of any person under section 106 or 107 with respect to any costs or damages which are not included in the agreement.

"(B) The authority of the Administrator to maintain an action under section 106 or 107 against any person who is not a party to the agreement.

"(d) ENFORCEMENT.—

"(1) CLEANUP AGREEMENTS.—

"(A) CONSENT DECREE.—Whenever the Administrator enters into an agreement under this section with any potentially responsible party with respect to action under section 106, following approval of the agreement by the Attorney General, the agreement shall be entered in the appropriate United States district court as a consent decree under that section. The Administrator need not make any finding regarding an imminent and substantial endangerment to the public health or the environment.

"(B) EFFECT.—The entry of any consent decree under this subsection shall not be construed to be an acknowledgment by the parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the

public health or welfare or the environment. The participation by any party in the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

"(C) STRUCTURE.—The Administrator may fashion a consent decree so that (i) the entering of such decree and compliance with such decree or with any determination or agreement made pursuant to this section shall not be considered an admission of liability for any purpose, and (ii) the entering of such decree and such compliance and such determination or agreement shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

"(2) PUBLIC PARTICIPATION.—

"(A) FILING OF PROPOSED JUDGMENT.—At least 30 days before a final judgment is entered under paragraph (1), the proposed judgment shall be filed with the court.

"(B) OPPORTUNITY FOR COMMENT.—The Attorney General shall provide an opportunity to

persons who are not named as parties to the action to comment on the proposed judgment before its entry by the court as a final judgment. The Attorney General shall consider, and file with the court, any written comments, views, or allegations relating to the proposed judgment. The Attorney General may (i) withdraw or withhold its consent to the proposed judgment if the comments, views, and allegations concerning the judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper, or inadequate, or (ii) oppose an attempt by any person to intervene in the action.

"(3) 104(b) AGREEMENTS.—Whenever the Administrator enters into an agreement under this section with any potentially responsible party with respect to action under section 104(b), the Administrator shall issue an order setting forth the obligations of such party. The United States district court for the district in which the release or threatened release occurs may enforce such order. Any party to an agreement under this section who fails or refuses to comply with the requirements of the order shall be liable for a civil penalty in an amount not to exceed $25,000 for each day during which such failure or refusal continues.

"(e) Special Notice Procedures.—

"(1) Notice.—Whenever the Administrator determines that a period of negotiation under this subsection would facilitate an agreement under this subsection with potentially responsible parties for taking action under subsection (b) of section 104, or action under section 106, the Administrator shall so notify all such parties and shall provide them with information concerning each of the following:

"(A) The identity of other notice recipients.

"(B) To the extent such information is available, the volume and nature of substances contributed by each potentially responsible person identified at the facility.

"(C) A ranking by volume of the substances at the facility, to the extent such information is available.

The Administrator shall make the information referred to in this paragraph available in advance of notice under this paragraph upon the request of a potentially responsible party in accordance with procedures provided by the Administrator. The provisions of subsection (e) of section 104 regarding protection of confidential information apply to information provided under this paragraph.

"(2) NEGOTIATION.—

"(A) MORATORIUM.—Except as provided in this subsection, the Administrator may not commence action under section 104(a) or take any action under section 106 for 120 days after providing notice and information under this subsection with respect to such action. Except as provided in this subsection, the Administrator may not commence action under section 104(b) for 90 days after providing notice and information under this subsection with respect to such action.

"(B) PROPOSALS.—Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 106 shall have 60 days from the date of receipt of such notice to make a proposal to the Administrator for undertaking or financing the action under section 106. Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 104(b) shall have 60 days from the date of receipt of such notice to make a proposal to the Administrator for undertaking or financing the action under section 104(b).

"(C) ADDITIONAL PARTIES.—If an additional potentially responsible party is identified during the negotiation period or after an agreement has been entered into under this subsection concerning a release or threatened release, the Administrator may bring the additional party into the negotiation or enter into a separate agreement with such party.

"(3) FAILURE TO PROPOSE.—If the Administrator determines that a good faith proposal for undertaking or financing action under section 106 has not been submitted within 60 days of the provision of notice pursuant to this subsection, the Administrator may thereafter commence action under section 104(a) or take an action against any person under section 106 of this Act. If the Administrator determines that a good faith proposal for undertaking or financing action under section 104(b) has not been submitted within 60 days after the provision of notice pursuant to this subsection, the Administrator may thereafter commence action under section 104(b).

"(4) SIGNIFICANT PUBLIC HEALTH THREATS.—Nothing in this subsection shall limit the Administrator's authority to undertake response action regarding a

significant threat to public health within the negotiation period established by this subsection.

"(f) COVENANT NOT TO SUE.—

"(1) IN GENERAL.—The Administrator may, in his discretion, provide any person with a covenant not to sue concerning any liability under this Act, including future liability, resulting from a release or threatened release of a hazardous substance addressed by a remedial action, whether that action is onsite or offsite, if each of the following conditions are met:

"(A) The covenant not to sue is in the public interest.

"(B) The covenant not to sue would expedite response action consistent with the National Contingency Plan under section 105 of this Act.

"(C) The person is in full compliance with a consent decree under section 106 (including a consent decree entered into in accordance with this section) for response to the release or threatened release concerned.

"(D) The response action has been approved by the Administrator.

"(2) REQUIREMENT THAT REMEDIAL ACTION BE COMPLETED.—A covenant not to sue concerning future liability shall not take effect until the Adminis-

trator certifies that remedial action has been completed in accordance with the requirements of this Act at the facility that is the subject of such covenant.

"(3) GROUNDWATER AND SURFACE WATER PROTECTION FUND.—

"(A) ESTABLISHMENT OF FUND.—There is established in the Treasury a fund to be known as the 'Groundwater and Surface Water Protection Fund', consisting of amounts required to be contributed under a covenant not to sue under this subsection.

"(B) USE OF FUND.—Amounts of contributions made to the Groundwater and Surface Water Protection Fund with respect to a facility shall be available for a period of ten years only for remedial actions required at such facility after the Administrator makes the certification with respect to such facility under paragraph (2). After the end of such period, such amounts shall be available for remedial actions at any facility for which a certification has been made under paragraph (2) and with respect to which contributions are made under this subsection.

"(4) FACTORS.—In assessing the appropriateness of a covenant not to sue and any condition to be in-

cluded in a covenant not to sue (including the amount of contributions required to be paid to the Groundwater and Surface Water Protection Fund), the Administrator shall consider whether the covenant or condition is in the public interest on the basis of such factors as the following:

"(A) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned.

"(B) The nature of the risks remaining at the facility.

"(C) The extent to which performance standards are included in the order or decree.

"(D) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

"(E) The extent to which the technology used in the response action is demonstrated to be effective.

"(F) Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.

"(G) Whether a waiver has been granted under section 121(i)(1)(E).

"(5) SATISFACTORY PERFORMANCE.—Any limitation of liability provided to a party under this subsection shall be subject to the satisfactory performance by such party of its obligations under the agreement concerned.

"(6) ADDITIONAL CONDITIONS FOR FUTURE LIABILITY.—A covenant not to sue a person concerning future liability shall include one of the following:

"(A) An exception to the covenant that allows the Administrator to sue such person concerning future liability resulting from the release or threatened release that is the subject of the covenant where such liability arises out of conditions which are unknown at the time the Administrator certifies under paragraph (2) that remedial action has been completed at the facility concerned.

"(B) A requirement that such person make contributions to the Groundwater and Surface Water Protection Fund sufficient to provide resources likely to be adequate to clean up any groundwater or surface water contamination resulting from conditions which were unknown or reasonably could not have been known at the time

the Administrator certifies under paragraph (2) that remedial action has been completed at the facility concerned. The Administrator shall determine whether resources are adequate to clean up such contamination on the basis of—

"(i) the likelihood of groundwater or surface water contamination resulting from conditions which are unknown at the time the remedial action is completed, and

"(ii) the probable cost of cleanup in the event of groundwater or surface water contamination.

"(g) DE MINIMIS SETTLEMENTS.—

"(1) EXPEDITED FINAL SETTLEMENT.—Whenever practicable and in the public interest, as determined by the Administrator, the Administrator shall as promptly as possible reach a final settlement with a potentially responsible party in an administrative or civil action under section 106 or 107 if such settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the Administrator, the conditions in either of the following subparagraph (A) or (B) are met:

"(A) Both of the following are minimal in comparison to other hazardous substances at the facility:

"(i) The amount of the hazardous substances contributed by that party to the facility.

"(ii) The toxic or other hazardous effects of the substances contributed by that party to the facility.

"(B) The potentially responsible party—

"(i) is the owner of the real property on or in which the facility is located;

"(ii) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and

"(iii) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

This subparagraph does not apply if the potentially responsible party purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, or disposal of any hazardous substance.

"(2) RELEASE FROM LIABILITY.—The Administrator may provide a covenant not to sue with respect to the facility concerned, or grant a release from liability with respect to the facility concerned, to any party who has entered into a settlement under this subsection unless such a covenant or release would be inconsistent with the public interest as determined under subsection (f).

"(3) EXPEDITED RELEASES.—The Administrator shall reach any such settlement, grant any such covenant not to sue, or grant any such release from liability as soon as possible after the Administrator has available the information necessary to reach such a settlement, grant such a covenant, or grant such a release from liability.

"(4) CONSENT DECREE OR ADMINISTRATIVE ORDER.—A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. The district court for the district in which the release or threatened release occurs may enforce such order.

"(5) EFFECT OF RELEASE.—A party who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement.

Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement. This paragraph does not apply to a settlement that was achieved through fraud, misrepresentation, other misconduct by one of the parties to the settlement, or mutual mistake of fact.

"(6) SETTLEMENTS WITH OTHER POTENTIALLY RESPONSIBLE PARTIES.—Nothing in this subsection shall be construed to affect the authority of the Administrator to reach settlements with other potentially responsible parties under this Act.

"(h) EPA COST RECOVERY SETTLEMENT AUTHORITY.—

"(1) AUTHORITY TO SETTLE.—The head of any department or agency with authority to undertake a response action under this Act pursuant to the national contingency plan may consider, compromise, and settle a claim under section 107 for costs incurred by the United States Government if the claim has not been referred to the Department of Justice for further action. Any claim for costs and damages which in the aggregate is in excess of $500,000 (excluding interest) may be compromised only with the prior written approval of the Attorney General or his designee.

"(2) FINALITY OF SETTLEMENT.—A settlement under this subsection shall be final and conclusive as to the matters addressed in the settlement, unless the settlement was achieved through fraud, misrepresentation, other misconduct by one of the parties to the settlement, or mutual mistake of fact. No court shall have jurisdiction to review the settlement unless there is a verified complaint with supporting affidavits attesting to specific instances of such fraud, misrepresentation, other misconduct, or mutual mistake of fact.

"(3) USE OF ARBITRATION.—Arbitration in accordance with regulations promulgated under this subsection may be used as a method of settling claims of the United States Government under this section. After consultation with the Attorney General, the department or agency head may establish and publish regulations for the use of arbitration or settlement under this subsection. An arbitration under this subsection shall be final and conclusive to the extent provided in paragraph (2).

"(4) RECOVERY OF CLAIMS.—If any person fails to pay a claim that has been settled under this subsection, the department or agency head shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount of such

claim, plus costs, attorneys' fees, and interest from the date of the settlement. In such an action, the terms of the settlement shall not be subject to review.

"(5) CLAIMS FOR CONTRIBUTION.—A person who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement. This paragraph does not apply to a settlement which was achieved through fraud, misrepresentation, other misconduct by one of the parties to the settlement, or mutual mistake of fact.

"(i) SETTLEMENT PROCEDURES.—

"(1) PUBLICATION IN FEDERAL REGISTER.—At least 30 days before any settlement (including any settlement arrived at through arbitration) may become final under subsection (h), or under subsection (g) in the case of a settlement embodied in an administrative order, the head of the department or agency which has jurisdiction over the proposed settlement shall publish in the Federal Register notice of the proposed settlement. The notice shall identify the facility concerned and the parties to the proposed settlement.

"(2) COMMENT PERIOD.—For a 30-day period beginning on the date of publication of notice of a proposed settlement under paragraph (1), the head of the department or agency which has jurisdiction over the proposed settlement shall provide an opportunity for persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement.

"(3) CONSIDERATION OF COMMENTS.—The head of the department or agency shall consider any comments filed under paragraph (2) in determining whether or not to consent to the proposed settlement and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

"(j) NATURAL RESOURCES.—

"(1) NOTIFICATION OF TRUSTEE.—Where a release or threatened release of any hazardous substance that is the subject of negotiations under this section may have resulted in damages to natural resources under the trusteeship of the United States, the Administrator shall notify the Federal natural resource trustee of the negotiations and shall encourage the participation of such trustee in the negotiations.

"(2) COVENANT NOT TO SUE.—An agreement under this section may contain a covenant not to sue under section 107(a)(4)(C) for damages to natural resources under the trusteeship of the United States resulting from the release or threatened release of hazardous substances that is the subject of the agreement, but only if the Federal natural resource trustee has agreed in writing to such covenant. The Federal natural resource trustee may agree to such covenant if the potentially responsible party agrees to undertake appropriate actions necessary to protect and restore the natural resources damaged by such release or threatened release of hazardous substances.

"(k) DEFINITION OF POTENTIALLY RESPONSIBLE PARTY.—As used in this section and section 119, the term 'potentially responsible party' means, with respect to any release or threatened release, a person against whom an action could be brought under section 106 with respect to such release or a person who would be liable under section 107 if response costs were incurred by the Administrator with respect to such release or threatened release.

"(l) SECTION NOT APPLICABLE TO VESSELS.—The provisions of this section shall not apply to a release from a vessel.".

SEC. 123. REIMBURSEMENT TO LOCAL GOVERNMENTS.

(a) Title I of CERCLA is amended by adding the following after section 122:

"SEC. 123. REIMBURSEMENT TO LOCAL GOVERNMENTS.

"(a) APPLICATION.—Any general purpose unit of local government for a political subdivision which is affected by a release or threatened release at any facility may apply to the Administrator for reimbursement under this section.

"(b) REIMBURSEMENT.—

"(1) TEMPORARY EMERGENCY MEASURES.—The Administrator is authorized to reimburse local community authorities for expenses incurred in carrying out temporary emergency measures necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance or pollutant or contaminant. Such measures may include, where appropriate, security fencing to limit access, response to fires and explosions, and other measures which require immediate response at the local level.

"(2) PROTECTION OF PUBLIC DRINKING WATER.—The Administrator is authorized to reimburse local communities for expenses incurred in carrying out emergency measures for the protection of public drinking water supplies as a result of contamination by the release of any hazardous substance or

pollutant or contaminant into existing sources of public drinking water. Such measures may include, where appropriate, treatment to remove contaminants and other measures which require immediate response at the local level.

"(c) AMOUNT.—The amount of any reimbursement to any local authority under subsection (b)(1) may not exceed $25,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the units of local government having jurisdiction over the political subdivision in which the facility is located.

"(d) PROCEDURE.—Reimbursements authorized pursuant to this section shall be in accordance with rules promulgated by the Administrator within one year after the date of the enactment of this section.".

SEC. 124. LANDFILL GAS OPERATORS.

Title I of CERCLA is amended by adding the following after section 123:

"SEC. 124. LANDFILL GAS OPERATORS.

"(a) EXEMPTION FROM CERTAIN LIABILITY.—

"(1) GENERAL RULE.—Notwithstanding the provisions of section 114, a landfill gas operator shall not be liable for the following in an action under section 106 or 107 of this Act (including an action for contribution or indemnification):

"(A) Any amount with respect to a release or threatened release from a landfill gas operation.

"(B) Any amount resulting from the operation of a landfill gas operation.

"(C) Costs of cleanup, removal, response and remedial actions, and claims for natural resources damages.

The exemption from liability under this paragraph also applies in any action with respect to a release or threatened release of a hazardous substance from a landfill gas operation for recovery of any amount referred to in subparagraph (A), (B), or (C) under the laws of any State or political subdivision of a State.

"(2) NEGLIGENCE, ETC.—Paragraphs (1) and (2) shall not apply in the case of a release that is caused by conduct of the landfill gas operator which is negligent or grossly negligent or which constitutes intentional misconduct.

"(b) SAVINGS PROVISIONS.—

"(1) LIABILITY OF OTHER PERSONS.—Nothing in this section shall affect the liability under this Act or under any other authority of Federal or State law of any person, other than a landfill gas operator.

"(2) Burden of plaintiff.—Nothing in this section shall affect the plaintiff's burden of establishing liability under this title.

"(c) Condensate.—

"(1) Exclusion.—Except as provided in paragraph (2), a landfill gas operation shall not be deemed to be management, generation, transportation, treatment, storage, or disposal of any hazardous or liquid waste within the meaning of subtitle C of the Solid Waste Disposal Act.

"(2) Regulation.—If the aqueous or hydrocarbon phase of the condensate or any other waste material removed from gas recovered from a landfill meets any of the characteristics identified under section 3001 of the Solid Waste Disposal Act, such condensate phase or other waste material shall be deemed a hazardous waste under subtitle C of the Solid Waste Disposal Act and shall be regulated accordingly under such subtitle.

"(3) Return of condensate.—Condensate removed from gas recovered by a landfill gas operator shall not be returned to the landfill in a container, unless such condensate is treated so that it is no longer a free liquid.

"(d) Definitions.—As used in this section—

"(1) LANDFILL GAS OPERATION.—The term 'landfill gas operation' means the installation or operation of a system for the recovery or processing of methane from a landfill.

"(2) LANDFILL GAS OPERATOR.—The term 'landfill gas operator' means the owner or operator of a landfill gas operation.".

SEC. 125. SECTION 3001(b)(3)(A)(i) WASTE.

Title I of CERCLA is amended by adding after section 124 the following new section:

"SEC. 125. SECTION 3001(b)(3)(A)(i) WASTE.

"(a) REVISION OF HAZARD RANKING SYSTEM.—This section shall apply only to facilities which are not included or proposed for inclusion on the National Priorities List and which contain substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act. As expeditiously as practicable, the Administrator shall revise the hazard ranking system in effect under the National Contingency Plan with respect to such facilities in a manner which assures appropriate consideration of each of the following site-specific characteristics of such facilities:

"(1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison thereof with other wastes.

"(2) The extent of, and potential for, release of such hazardous constituents into the environment.

"(3) The degree of risk to human health and the environment posed by such constituents.

"(b) Inclusion Prohibited.—Until the hazard ranking system is revised as required by this section, the Administrator may not include on the National Priorities List any facility which contains substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act on the basis of an evaluation made principally on the volume of such waste and not on the concentrations of the hazardous constituents of such waste. Nothing in this section shall be construed to affect the Administrator's authority to include any such facility on the National Priorities List based on the presence of other substances at such facility or to exercise any other authority of this Act with respect to such other substances.".

SEC. 126. WORKER PROTECTION STANDARDS.

Title I of the CERCLA is amended by adding the following new section after section 125.

"SEC. 126. WORKER PROTECTION STANDARDS.

"(a) Issuance.—The Secretary of Labor shall, pursuant to section 6 of the Occupational Safety and Health Act of 1970, issue, within one year after the date of the enactment of this section, standards for the health and safety

protection of employees, including employees of State and local governments, engaged in hazardous waste operations.

"(b) MINIMUM GENERAL REQUIREMENTS.—Such standards shall include, but not be limited to, the following worker protection provisions:

"(1) SITE ANALYSIS.—Requirements for a formal hazard analysis of the site and development of a site specific plan for worker protection.

"(2) TRAINING.—Requirements for contractors to provide initial and routine training of workers before such workers are permitted to engage in hazardous waste operations which would expose them to toxic substances.

"(3) MEDICAL SURVEILLANCE.—A program of regular medical examination, monitoring, and surveillance of workers engaged in hazardous waste operations which would expose them to toxic substances.

"(4) PROTECTIVE EQUIPMENT.—Requirements for appropriate personal protective equipment, clothing, and respirators for work in hazardous waste operations.

"(5) ENGINEERING CONTROLS.—Requirements for engineering controls concerning the use of equipment and exposure of workers engaged in hazardous waste operations.

"(6) MAXIMUM EXPOSURE LIMITS.—Requirements for maximum exposure limitations for workers engaged in hazardous waste operations, including necessary monitoring and assessment procedures.

"(7) INFORMATIONAL PROGRAM.—A program to inform workers engaged in hazardous waste operations of the nature and degree of toxic exposure likely as a result of such hazardous waste operations.

"(8) HANDLING.—Requirements for the handling, transporting, labeling, and disposing of hazardous wastes.

"(9) NEW TECHNOLOGY PROGRAM.—A program for the introduction of new equipment or technologies that will maintain worker protections.

"(10) DECONTAMINATION PROCEDURES.—Procedures for decontamination.

"(11) EMERGENCY RESPONSE.—Requirements for emergency response and protection of workers engaged in hazardous waste operations.

"(c) SPECIFIC TRAINING STANDARDS.—

"(1) OFFSITE TRAINING; FIELD EXPERIENCE.—The training standards issued under subsection (b)(2) shall require that general site workers such as equipment operators, general laborers, and other supervised personnel receive a minimum of 40 hours of initial in-

struction off the site, and a minimum of three days of actual field experience under the direct supervision of a trained, experienced supervisor, at the time of assignment. Workers who may be exposed to unique or special hazards shall be provided additional training.

"(2) TRAINING OF SUPERVISORS.—Such training standards shall require that onsite management and supervisors directly responsible for the hazardous waste operations, such as foremen, receive the same training as general site workers set forth in paragraph (1) of this subsection and at least eight additional hours of specialized training on managing hazardous waste operations.

"(3) CERTIFICATION; ENFORCEMENT.—Such training standards shall contain provisions for certifying that general site workers and supervisors have received the specified training and shall prohibit any individual who has not received the specified training from engaging in hazardous waste operations covered by the standard.

"(4) TRAINING OF EMERGENCY RESPONSE PERSONNEL.—Such training standards shall set forth requirements for the training of workers who are responsible for responding to hazardous emergency situations

who may be exposed to toxic substances in carrying out their responsibilities.

"(d) DEADLINE FOR INTERIM REGULATIONS.—The Secretary of Labor shall issue interim final rules under this section within 60 days after the date of the enactment of this section which shall provide no less protection under this section for workers employed by contractors and emergency response workers than the protections contained in the Environmental Protection Agency Manual (1981) 'Health and Safety Requirements for Employees Engaged in Field Activities' and existing standards under the Occupational Safety and Health Act of 1970 found in subpart C of part 1926 of title 29 of the Code of Federal Regulations.

"(e) GRANT PROGRAM.—

"(1) GRANT PURPOSES.—Grants for the training and education of workers who are or may be engaged in activities related to hazardous waste removal or containment or emergency response may be made under this subsection.

"(2) ADMINISTRATION.—Grants under this subsection shall be administered by the National Institute of Occupational Safety and Health.

"(3) GRANT RECIPIENTS.—Grants shall be awarded to nonprofit organizations which demonstrate experience in implementing and operating worker

health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be engaged in hazardous waste removal or containment or emergency response operations.

"(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the general fund of the Treasury for grants under this subsection $10,000,000 per fiscal year for each of the fiscal years 1986, 1987, 1988, 1989, and 1990.".

SEC. 127. LIABILITY LIMITS FOR OCEAN INCINERATION VESSELS.

(a) DEFINITION.—Section 101 of CERCLA is amended by adding at the end the following new paragraph:

"(33) 'incineration vessel' means any vessel which carries hazardous substances for the purpose of incineration of such substances, during any period when such substances or residues of such substances are on board the vessel.".

(b) LIABILITY.—Section 107 of CERCLA is amended—

(1) in subsection (a)(3) by inserting "or incineration vessel" after "facility";

(2) in subsection (a)(4) by inserting ", incineration vessels" after "facilities";

(3) in subparagraph (A) of subsection (c)(1) by inserting ", other than an incineration vessel," after "vessel";

(4) in subparagraph (B) of subsection (c)(1) by inserting "other than an incineration vessel," after "other vessel,"; and

(5) in subparagraph (D) of subsection (c)(1) by inserting "any incineration vessel or for" before "any facility".

(c) FINANCIAL RESPONSIBILITY.—Section 108(a) of CERCLA is amended—

(1) in paragraph (1) by inserting "to cover the liability prescribed under paragraph (1) of section 107(a) of this Act" after "whichever is greater)";.

(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by striking out "paragraphs (1) of" in paragraphs (3) and (4), as so redesignated; and

(3) by inserting after paragraph (1) the following new paragraph:

"(2) In addition to the financial responsibility required by paragraph (1) of this subsection, the Administrator may require additional evidence of financial responsibility for incineration vessels in such amounts as the Administrator deems appropriate, taking into account the potential

risks posed by incineration and transport for incineration, and by any other factors deemed relevant.".

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. POST CLOSURE.

(a) REPEAL OF POST-CLOSURE PROVISIONS.—Sections 107(k) and 111(j) of CERCLA are hereby repealed. Section 101(11) of CERCLA is amended by striking out "or, in the case of" and all that follows through the semicolon at the end thereof and inserting in lieu thereof a semicolon.

(b) POST-CLOSURE PROGRAM.—The Comptroller General shall conduct a study of options for a program for the management of the liabilities associated with hazardous waste disposal sites after their closure.

(c) PROGRAM ELEMENTS.—The program referred to in subsection (b) shall be designed to assure each of the following:

(1) Incentives are created and maintained for the safe management and disposal of hazardous wastes so as to assure protection of human health and the environment.

(2) Members of the public will have reasonable confidence that hazardous wastes will be managed and disposed of safely and that resources will be available to address any problems that may arise from the re-

lease or off-site migration of hazardous wastes from disposal sites, and to cover costs of long-term monitoring, care, and maintenance of such sites.

(3) Persons who are or seek to become owners and operators of hazardous waste disposal facilities will be able to manage their potential future liabilities and to attract the investment capital necessary to build, operate, and close such facilities in a manner which assures protection of human health and the environment.

(d) PROCEDURES.—In carrying out the responsibilities of this section, the Comptroller General shall consult with the Administrator, the Secretary of Commerce, the Secretary of the Treasury, and the heads of other appropriate Federal agencies.

(e) CONSIDERATION OF OPTIONS.—In conducting the study under this section, the Comptroller General shall consider all options which may serve the purposes set forth in subsection (c) including each of the following:

(1) Closure requirements and financial responsibility requirements.

(2) Private insurance.

(3) Insurance provided by the Federal Government.

(4) Coinsurance, reinsurance, or pooled-risk insurance, whether provided by the private sector or provided or assisted by the Federal Government.

(5) Reinstitution of and modification to the Post-closure Liability Trust Fund.

(6) Creation of a new program to be administered by a new or existing Federal agency or by a federally chartered corporation.

(f) RECOMMENDATIONS.—The Comptroller General shall consider options for funding any program under this section and shall, to the extent necessary, make recommendations to the appropriate committees of Congress for additional authority to implement such program.

SEC. 202. TRANSPORTATION OF HAZARDOUS MATERIALS.

Section 306 of CERCLA is amended by inserting after "listed" each place it appears in subsections (a) and (b) "and regulated".

SEC. 203. STATE PROCEDURAL REFORM.

(a) IN GENERAL.—Title III of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 309. ACTIONS UNDER STATE LAW FOR DAMAGES FROM EXPOSURE TO HAZARDOUS SUBSTANCES.

"(a) STATE STATUTES OF LIMITATIONS FOR HAZARDOUS SUBSTANCE CASES.—

"(1) EXCEPTION TO STATE STATUTES.*—In the case of any action brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility, if the applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the federally required commencement date, such period shall commence at the Federally required commencement date in lieu of the date specified in such State statute.*

"(2) STATE LAW GENERALLY APPLICABLE.*—Except as provided in paragraph (1), the statute of limitations established under State law shall apply in all actions brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility.*

"(3) ACTIONS UNDER SECTION 107.*—Nothing in this section shall apply with respect to any cause of action brought under section 107 of this Act.*

"(b) DEFINITIONS.*—As used in this section—*

"(1) TITLE I TERMS.—The terms used in this section shall have the same meaning as when used in title I of this Act.

"(2) APPLICABLE LIMITATIONS PERIOD.—The term 'applicable limitations period' means the period specified in a statute of limitations during which a civil action referred to in subsection (a)(1) may be brought.

"(3) COMMENCEMENT DATE.—The term 'commencement date' means the date specified in a statute of limitations as the beginning of the applicable limitations period.

"(4) FEDERALLY REQUIRED COMMENCEMENT DATE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'federally required commencement date' means the date the plaintiff knew (or reasonably should have known) that the personal injury or property damages referred to in subsection (a)(1) were caused or contributed to by the hazardous substance or pollutant or contaminant concerned.

"(B) SPECIAL RULES.—In the case of a minor or incompetent plaintiff, the term 'federally required commencement date' means the later of

the date referred to in subparagraph (A) or the following:

"(i) In the case of a minor, the date on which the minor reaches the age of majority, as determined by State law, or has a legal representative appointed.

"(ii) In the case of an incompetent individual, the date on which such individual becomes competent or has had a legal representative appointed.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) of this section shall take effect with respect to actions brought after December 11, 1980.

SEC. 204. CONFORMING AMENDMENT TO FUNDING PROVISIONS.

(a) HAZARDOUS SUBSTANCES SUPERFUND.—Section 221(a) of CERCLA is amended by striking out "Hazardous Substance Response Trust Fund" and inserting in lieu thereof "Hazardous Substances Superfund".

(b) CROSS REFERENCE TO FUNDING PROVISIONS.—Section 221(c) of CERCLA is amended to read as follows:

"(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Response Trust Fund shall be available for expenditure only as provided in section 111 of this Act.".

SEC. 205. CLEANUP OF PETROLEUM FROM LEAKING UNDERGROUND STORAGE TANKS.

(a) DEFINITION OF PETROLEUM.—Section 9001(2)(B) of the Solid Waste Disposal Act is amended by striking out all that follows "petroleum" and inserting in lieu thereof a period. Section 9001 of such Act is amended by adding at the end thereof the following:

"(8) The term 'petroleum' means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).".

(b) STATE INVENTORIES.—Section 9002 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(c) STATE INVENTORIES.—Each State shall make 2 separate inventories of all underground storage tanks in such State containing regulated substances, and those of such tanks from which there is a known release of regulated substances. One inventory shall be made with respect to petroleum and one with respect to other regulated substances. In making such inventories, the State shall utilize the notification procedures and forms developed pursuant to subsections (a) and (b) of this section. Each State shall submit its inventories to the Administrator not later than November 8, 1986.".

(c) EPA RESPONSE PROGRAM.—Section 9003 of the Solid Waste Disposal Act is amended by adding after subsection (g) the following new subsection:

"(h) EPA RESPONSE PROGRAM FOR PETROLEUM.—

"(1) BEFORE (c)(4) REGULATIONS.—Before the effective date of corrective action regulations under subsection (c)(4), the Administrator is authorized to—

"(A) undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the Administrator, to protect human health and the environment; or

"(B) require the owner or operator of the underground storage tank to undertake such corrective action with respect to any such release unless the Administrator determines that such action will not be carried out properly by such owner or operator.

The corrective action undertaken or required under this paragraph shall be such as may be necessary to protect human health and the environment. In undertaking or requiring such corrective action, the Administrator shall take into account the distinctions referred to in subsection (b). The Administrator shall use funds in *the Leaking Underground Storage Tank Trust Fund for payment of costs incurred for corrective action under subparagraph (A). Subject to the priority requirements of paragraph (3), the Administrator shall give priority in undertaking such actions under subparagraph (A) to cases where the Administrator cannot identify a solvent owner or operator of the tank who will undertake the action properly.*

"(2) AFTER (c)(4) REGULATIONS.—Following the effective date of regulations under subsection (c)(4), all actions of the Administrator (or ordered by the Administrator) described in paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date, the Administrator may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if such action is necessary, in the judgment of the Administrator, to protect human health and the environment and one or more of the following situations exists:

"(A) No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is—

"(i) an owner or operator of the tank concerned,

"(ii) subject to such corrective action regulations, and

"(iii) capable of carrying out such corrective action properly.

"(B) A situation exists which requires prompt action by the Administrator under this paragraph to protect human health and the environment.

"(C) The owner or operator of the tank has failed or refused to comply with an order of the Administrator under section 9006 to comply with the corrective action regulations.

"(3) PRIORITY OF CORRECTIVE ACTIONS.—The Administrator shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment.

"(4) CORRECTIVE ACTION ORDERS.—The Administrator is authorized to issue orders to the owner or operator of an underground storage tank to carry out subparagraph (B) of paragraph (1) or to carry out

regulations issued under subsection (c)(4). Such orders shall be issued and enforced in the same manner and subject to the same requirements as orders under section 9006.

"(5) ALLOWABLE CORRECTIVE ACTIONS.—The corrective actions undertaken by the Administrator under paragraph (1) or (2) may include temporary or permanent relocation of residents and alternative household water supplies. In connection with the performance of any corrective action under paragraph (1) or (2), the Administrator may also determine the health effects of the release concerned. The costs of any study to determine such effects shall not be treated as corrective action for purposes of paragraph (6), relating to cost recovery.

"(6) RECOVERY OF COSTS.—

"(A) IN GENERAL.—Whenever costs have been incurred by the Administrator, or by a State pursuant to paragraph (7), for undertaking corrective action with respect to the release of petroleum from an underground storage tank, the owner and operator of such tank shall be liable to the Administrator or the State for such costs. The liability under this paragraph shall be construed to be the

standard of liability which obtains under section 311 of the Federal Water Pollution Control Act.

"(B) INTERIM LIMIT ON LIABILITY.—

"(i) INITIAL CORRECTIVE ACTION.—Except as provided in clause (ii) of this subparagraph and subparagraph (C) and until a determination is made under subparagraph (D), the maximum liability under this paragraph for each corrective action undertaken at a facility at which a release of petroleum from an underground storage tank occurs shall be—

"(I) $1,000,000 in the case of an operator who is not an owner and who operates seven or fewer tanks containing petroleum at such facility;

"(II) $3,000,000 in the case of an owner who owns seven or fewer tanks containing petroleum at such facility; and

"(III) $5,000,000 in the case of an owner or operator who owns or operates more than seven such tanks at such facility.

"(ii) INCREASED LIMITS.—Except as provided in subparagraph (C) and until a determination is made under subparagraph (D), the maximum liability under this paragraph for each corrective action undertaken at a facility at which a release of petroleum from an underground storage tank occurs shall be—

"(I) $10,000,000 in the case of an owner or operator whose gross assets are more than $1,000,000,000 but not more than $5,000,000,000;

"(II) $25,000,000 in the case of an owner or operator whose gross assets are more than $5,000,000,000 but not more than $10,000,000,000; and

"(III) $50,000,000 in the case of an owner or operator whose gross assets are more than $10,000,000,000.

"(iii) ADDITIONAL CORRECTIVE ACTION.—Additional corrective action which is required to respond to a release of petroleum from an underground storage tank which occurs after completion of corrective action in response to an earlier release from such tank

shall be treated as a separate corrective action for purposes of clauses (i) and (ii) of this subparagraph.

"(iv) APPLICATION.—The limitation on liability under this subparagraph shall apply only with respect to liability under this paragraph for costs incurred by the Administrator or a State for undertaking corrective action with respect to the release of petroleum from an underground storage tank. Such limitation shall not affect the liability of any person under any other authority of law for any other costs or damages.

"(C) LIMITATIONS INAPPLICABLE.—The limitations under subparagraph (B) shall not apply if—

"(i) the release or threat of release was the result of willful misconduct or gross negligence within the privity or knowledge of such person; or

"(ii) the person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with corrective action activities under this Act.

"(D) PERMANENT REGULATIONS.—At the time financial responsiblity regulations are promulgated by the Administrator under this section, the Administrator shall determine whether limitations on the liability imposed under subparagraph (A) are appropriate. At such time, the Administrator may, by regulation, establish classes or categories of underground storage tanks and establish lower limits on liability than the limits prescribed by subparagraph (B) for such classes or categories, if the Administrator determines it appropriate on the basis of the following factors:

"(i) the size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks;

"(ii) the likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category;

"(iii) the economic impact of the limits on owners and operators of each such class, particularly relating to the small business segment of the petroleum marketing industry;

"(iv) the results of studies and actions undertaken in accordance with subsection (g); and

"(v) such other factors as the Administrator deems pertinent.

"(E) EFFECT ON LIABILITY.—

"(i) NO TRANSFERS OF LIABILITY.—No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this subsection, to any other person the liability imposed under this subsection. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

"(ii) NO BAR TO CAUSE OF ACTION.—Nothing in this subsection, including the provisions of clause (i) of this subparagraph, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or

would have, by reason of subrogation or otherwise against any person.

"(F) FACILITY.—For purposes of this paragraph, the term 'facility' means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owner or operator and located on a single parcel of property (or on any contiguous or adjacent property).

"(7) STATE AUTHORITIES.—Whenever a State has primary enforcement responsibility under section 9004, the State may submit to the Administrator a proposal to exercise the authorities of the Administrator under paragraphs (1), (2), (3), (4), (5), and (6) of this subsection. If the Administrator determines that such State has demonstrated the ability to exercise and enforce such authorities in a manner substantially equivalent to the Federal program under this subsection, the Administrator may delegate such authorities to the State. For purposes of funding corrective actions undertaken by a State pursuant to such delegated authorities, the Administrator may make such grants to the State from the Leaking Underground Storage Tank Trust Fund as the Administrator deems necessary to further the objectives of this subsection. Such

grants shall be apportioned among the States applying for grants as follows:

"(A) 50 percent on the basis of the number of underground storage tanks containing petroleum which are located in each such State, and

"(B) 50 percent on the basis of the number of such tanks located in each such State from which there is a known release of petroleum.

Determinations under subparagraphs (A) and (B) shall be based on information provided by the States in the surveys required under subsection (h).

"(8) EMERGENCY PROCUREMENT POWERS.—Notwithstanding any other provision of law, the Administrator may authorize the use of such emergency procurement powers as he deems necessary to effect the purpose of this subsection. The Administrator shall promulgate regulations prescribing the circumstances under which such authority shall be used and any procedures governing the use of such authority which the Administrator deems necessary.

"(9) DEFINITION OF OWNER.—As used in this subsection, the term 'owner' does not include any person who, without participating in the management of an underground storage tank, holds indicia of own-

ership primarily to protect his security interest in the tank.".

(d) METHODS OF FINANCIAL RESPONSIBILITY.—The first sentence of section 9003(d)(2) of the Solid Waste Disposal Act is amended by striking out "or" after "credit," and by striking out the period at the end thereof and inserting in lieu thereof the following: "or any other method satisfactory to the Administrator.".

(e) POLLUTION LIABILITY INSURANCE.—

(1) STUDY.—The Comptroller General shall conduct a study of the availability of pollution liability insurance, leak insurance, and contamination insurance for owners and operators of petroleum storage and distribution facilities. The study shall assess the current and projected extent to which private insurance can contribute to the financial responsibility of owners and operators of underground storage tanks and the ability of owners and operators of underground storage tanks to maintain financial responsibility through other methods. The study shall consider to what extent, if any, the placement of limitations on liability for corrective action costs by owners or operators of underground storage tanks will have on the availability of such insurance. The study shall consider the experience of owners or operators of marine vessels in getting

insurance for their liabilities under the Federal Water Pollution Control Act and the operation of the Water Quality Insurance Syndicate.

(2) REPORT.—The Comptroller General shall report his findings under this subsection to the Committees on Energy and Commerce and Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate within nine months after the date of the enactment of this subsection. Such report shall include recommendations for legislative or administrative changes that will enable owners and operators of underground storage tanks to maintain financial responsibility sufficient to provide for all clean-up costs and damages that may result from reasonably foreseeable releases and events.

SEC. 206. CITIZENS SUITS.

Title III of CERCLA is amended by adding the following new section after section 309:

"SEC. 310. CITIZENS SUITS.

"(a) AUTHORITY TO BRING CIVIL ACTIONS.—Except as provided in subsections (d) and (e) of this section, any person may commence a civil action on his own behalf—

"(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who—

"(A) is alleged to be in violation of any requirement which has become effective pursuant to this Act; or

"(B) has contributed or is contributing to the release or threatened release of any hazardous substance from a hazardous waste disposal site, if such release or threatened release may present an imminent and substantial endangerment to public health or the environment; or

"(2) against—

"(A) the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator; or

"(B) any other department, agency, or instrumentality of the United States where there is alleged a failure of such department, agency, or instrumentality to perform any act or duty under section 120 of this Act (relating to Federal facilities) which is not discretionary with such department, agency, or instrumentality.

For purposes of this subsection, the term 'hazardous waste disposal site' means a site at which disposal of hazardous waste has occurred or is occurring.

"(b) VENUE.—

"(1) ACTIONS UNDER SUBSECTION (a)(1).—Any action under subsection (a)(1)(A) shall be brought in the district court for the district in which the alleged violation occurred. Any action under subsection (a)(1)(B) shall be brought in the district court for the district in which the release or threatened release occurred.

"(2) ACTIONS UNDER SUBSECTION (a)(2).—Any action brought under paragraph (2) of subsection (a) may be brought in the United States District Court for the District of Columbia.

"(c) RELIEF.—The district court shall have jurisdiction in actions brought under subsection (a)(1)(A) to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a)(1)(B), to immediately restrain any person contributing to the endangerment referred to in subsection (a)(1)(B), to order such person to take response action as provided for under this Act, or both. The district court shall have jurisdiction in actions brought under subsection (a)(2) to order

the Administrator or other department, agency, or instrumentality to perform the act or duty concerned.

"(d) SUBSECTION (a)(1) ACTIONS.—

"(1) NOTICE.—No action may be commenced under subsection (a)(1) of this section prior to 60 days after the plaintiff has given notice of the violation or release or threatened release—

"(A) to the Administrator;

"(B) to the State in which the alleged violation or release or threatened release occurs; and

"(C) to any alleged violator or person who contributed or is contributing to the release or threatened release.

Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

"(2) ACTIONS UNDER PARAGRAPH (1).—No action may be commenced under subsection (a)(1) if the Administrator—

"(A) has commenced and is diligently—

"(i) pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of such requirement,

"(ii) pursuing an administrative order or civil action to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment, or

"(iii) prosecuting an action in court under section 106 of this Act, or under section 7003 of the Solid Waste Disposal Act, with respect to such violation or endangerment;

"(B) is actually engaging in a removal action under section 104 with respect to such violation or endangerment;

"(C) is diligently proceeding with a remedial investigation and feasibility study under section 104(b) of this Act or has completed a remedial investigation and feasibility study and is diligently proceeding with a response action with respect to such violation or endangerment; or

"(D) has obtained a court order (including a consent decree) under section 106 of this Act or under section 7003 of the Solid Waste Disposal Act under which any responsible party—

"(i) is diligently conducting a removal action,

"(ii) is diligently proceeding with a remedial investigation and feasibility study, or

"(iii) has completed a remedial investigation and feasibility study and is diligently proceeding with a response action,

with respect to such violation or endangerment.

In the case of an administrative order referred to in subparagraph (A), actions under subsection (a)(1)(B) are prohibited only as to the scope and duration of such administrative order.

"(3) ACTIONS UNDER SUBSECTION (a)(1)(B); STATE ACTIVITY.—No action may be commenced by any person other than the State under subsection (a)(1)(B) if, in order to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment, the State—

"(A) has commenced and is diligently prosecuting an action under subsection (a)(1)(B) with respect to such endangerment;

"(B) is actually engaging in a removal action under section 104 with respect to such endangerment; or

"(C) has incurred costs to initiate a remedial investigation and feasibility study under section

104(b) of this Act and is diligently proceeding with a remedial action under this Act.

"(4) STANDING.—For purposes of this section, only a person who has an interest which is or may be adversely affected may bring an action under subsection (a)(1)(B).

"(e) SUBSECTION (a)(2) ACTIONS.—No action may be commenced under paragraph (2) of subsection (a) prior to the 60th day following the date on which the plaintiff gives notice to the Administrator or other department, agency, or instrumentality that the plaintiff will commence such action. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

"(f) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

"(g) OTHER RIGHTS.—Nothing in this Act shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or

common law to seek enforcement of any standard or requirement relating to hazardous substances or to seek any other relief (including relief against the Administrator or a State agency).

"(h) INTERVENTION.—

"(1) BY THE UNITED STATES.—In any action under this section the United States, if not a party, may intervene as a matter of right.

"(2) BY PERSONS.—In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the Administrator or the State shows that the person's interest is adequately represented by existing parties in the action.

"(i) FEDERALLY PERMITTED RELEASE.—It shall be a defense in an action under subsection (a)(1)(B) if the defendant establishes that the release referred to in subsection (a)(1)(B) was a federally permitted release. For purposes of this subsection, the term 'federally permitted release' has the meaning given such term by section 101(10), except that such term shall not include discharges from a point source which are identified in a permit application (but not in a

permit) under section 402 of the Federal Water Pollution Control Act.

"(j) PESTICIDES.—No action may be brought under this section with respect to any release or threatened release resulting from the normal application of a pesticide product registered under, or whose application is otherwise authorized under, the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this subsection shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law (including common law)—

"(1) for damages, injury, or loss resulting from a release of any hazardous substance,

"(2) for removal or remedial action, or

"(3) for the costs of removal or remedial action for such hazardous substance.

"(k) DEFINITIONS.—The terms used in this section shall have the same meanings as when used in title I.".

SEC. 207. INDIAN TRIBES.

(a) IN GENERAL.—Title I of CERCLA is amended by adding the following new section after section 206:

"SEC. 207. INDIAN TRIBES.

"(a) DEFINITION.—As used in this Act, the term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska

Native village, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The term does not include any Alaska Native regional or village corporation.

"(b) FUTURE MAINTENANCE AND COST-SHARING REQUIREMENTS.—The requirements of section 104(c)(3) of this Act for assurances regarding future maintenance and cost-sharing shall not apply to remedial action to be taken on any of the following:

"(1) Land or water held by an Indian tribe.

"(2) Land or water held by the United States in trust for Indians.

"(3) Land or water held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation).

"(4) Land or water within the borders of an Indian reservation.

In the case of remedial action to be taken on any such land or water, the Secretary of the Interior shall provide the assurance required by section 104(c)(3) regarding the availability of a hazardous waste disposal facility.

"(c) CONTRACTS OR COOPERATIVE AGREEMENTS.—

"(1) AUTHORITY.—If the Administrator determines that an Indian tribe has the capability to carry out any or all of the actions authorized in this section,

the Administrator may, in his discretion, enter into a contract or cooperative agreement with such an Indian tribe to take such actions in accordance with criteria and priorities established pursuant to section 105(a)(8) and to be reimbursed for the reasonable response costs thereof from the Fund.

"(2) ENFORCEMENT.—If the Administrator enters into a contract or cooperative agreement pursuant to this subsection, and the Indian tribe thereof fails to comply with any requirements of the contract, the Administrator may, after providing 60 days notice, seek in the appropriate Federal district court for specific enforcement of the terms of the contract or to recover any funds paid under the contract in an amount not to exceed the costs incurred by the Administrator because of the breach of the contract by the Indian tribe.

"(d) NATURAL RESOURCES LIABILITY.—

"(1) LIABILITY TO TRIBE.—Liability under section 107(a)(4)(C) shall be to the Indian tribe in the case of an injury to, destruction of, or loss of natural resources belonging to, managed by, controlled by, or appertaining to the tribe, or held in trust for the benefit of the tribe, or belonging to a member of the tribe if such resources are subject to a trust restriction on alienation.

"(2) EXEMPTIONS.—No liability to an Indian tribe shall be imposed under section 107(a)(4)(C), where the party sought to be charged has demonstrated each of the following:

"(A) The damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement or other comparable environmental analysis.

"(B) A decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license. In the case of damages occurring pursuant to a Federal permit or license, this subparagraph applies only so long as the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe.

No liability to an Indian tribe shall be imposed under section 107(a) where the damages to natural resources complained of were the result of causes indentified in section 107(b).

"(3) RECOVERY.—The Secretary of the Interior, or the authorized representative of any Indian tribe,

shall act on behalf of the public as trustee of natural resources described in paragraph (1) to recover for damages described in paragraph (2). Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Indian tribe, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources. There shall be no recovery under the authority of section 107(a)(4)(C) where the damages complained of and the release of a hazardous substance from which such damages resulted have occurred wholly before the date of the enactment of this Act.

"(e) DELEGATION.—The Administrator is authorized to delegate authority to obligate money in the Fund or to settle claims to officials of an Indian tribe operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d).

"(f) COMMUNITY RELOCATION.—Should the Administrator determine that proper remedial action is the permanent relocation of tribal members away from a contaminated site because it is cost effective and necessary to protect their health and welfare, such finding must be concurred in by the affected tribal government before relocation shall occur. The Administrator, in cooperation with the Secretary of the

Interior, shall also assure that all benefits of the relocation program are provided to the affected tribe and that alternative land of equivalent value is available and satisfactory to the tribe. Any lands acquired for relocation of tribal members shall be held in trust by the United States for the benefit of the tribe.

"(g) STUDY.—The Administrator or his agent shall conduct a survey, in consultation with the Indian tribes, to determine the extent of hazardous waste sites on Indian lands. Such survey shall be included within a report which shall make recommendations on the program needs of tribes under this Act, with particular emphasis on how tribal participation in the administration of such programs can be maximized. Such report shall be submitted to Congress along with the President's budget request for fiscal year 1988.

"(h) LIMITATION.—Notwithstanding any other provision of this Act, no action under this Act by an Indian tribe shall be barred until the later of—

"(1) the applicable period of limitations has expired, or

"(2) two years after the United States, in its capacity as trustee for the tribe, gives written notice to the governing body of the tribe that it will not present a claim or commence an action on behalf of the tribe or

fails to present a claim or commence an action within the time limitations specified in this Act.

"(i) APPLICATION OF OTHER PROVISIONS.—The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 116 (regarding health assessments and protection), and section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the National Priorities List).".

(b) CONFORMING AMENDMENTS.—(1) Section 101(a)(16) of CERCLA is amended by striking out "or" the last place it appears and by inserting before the semicolon at the end thereof the following: ", any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe".

(2) Section 107 of CERCLA is amended—

(A) in subsection (a), by inserting "or an Indian tribe" after "State";

(B) in subsection (i), by inserting "or Indian tribe" after "State" the first place it appears; and

(C) in subsection (j), by inserting "or Indian tribe" after "State" the first place it appears.

SEC. 208. COMMENCEMENT OF DRILLING FLUIDS, ETC. STUDY.

The Administrator shall commence the study required under section 8002(m) of the Solid Waste Disposal Act not later than six months after the date of the enactment of this Act.

SEC. 209. INSURABILITY STUDY.

Section 301 of CERCLA is amended by adding at the end thereof the following new subsection:

"(g) INSURABILITY STUDY.—

"(1) STUDY GROUP.—The Comptroller General of the United States shall appoint a study group to carry out a study under this subsection. The study group shall be comprised of the following:

"(A) 1 representative of the Comptroller General and 2 representatives of the Administrator.

"(B) 4 representatives of persons described in paragraph (2).

"(C) 2 representatives of groups or organizations comprised generally of persons adversely affected by releases or threatened releases of hazardous substances.

"(D) 3 representatives of property and casualty insurers.

"(E) 1 representative of reinsurers.

The representative of the Comptroller General shall be the chairperson of the study group. One reporter shall be elected from among the members of the study group.

"(2) STUDY.—The study group shall undertake a study to determine the insurability of the liability of the following:

"(A) Persons who generate hazardous substances: liability for costs under this Act.

"(B) Persons who own or operate facilities: liability for costs under this Act.

"(C) Persons liable for harm to persons or property caused by the release of hazardous substances into the environment.

"(3) ITEM EVALUATED.—As part of their study in accordance with this section, the study group shall evaluate, among other matters, the following:

"(A) Current economic conditions in, and the future outlook for, the commercial market for insurance and reinsurance.

"(B) Current trends in statutory and common law remedies.

"(C) The impact of possible changes in traditional standards of liability, proof, evidence, and damages on existing statutory and common law remedies.

"(D) The effect of the standard of liability and extent of persons upon whom it is imposed under this Act on the underwriting and pricing of insurance coverage.

"(E) Current trends in judicial interpretation and construction of applicable insurance contracts.

"(F) The frequency and severity of a representative sample of claims closed during the calendar year preceding the date of the enactment of this subsection.

"(G) Other impediments to insurability.

"(4) SUBMISSION.—A report on the results of the study shall be submitted to Congress with appropriate recommendations within 18 months after the date of the enactment of this subsection.".

SEC. 210. POLLUTION LIABILITY INSURANCE.

CERCLA is amended by adding the following new title at the end thereof:

"TITLE IV—POLLUTION INSURANCE

"SEC. 401. DEFINITIONS.

"As used in this title—

"(1) INSURANCE.—The term 'insurance' means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law.

"(2) POLLUTION LIABILITY.—The term 'pollution liability' means liability for injuries arising from the release of hazardous substances or pollutants or contaminants.

"(3) RISK RETENTION GROUP.—The term 'risk retention group' means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State—

"(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

"(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

"(C) which is chartered or licensed as an insurance company and authorized to engage in the

business of insurance under the laws of any State; and

"(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

"(4) PURCHASING GROUP.—The term 'purchasing group' means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

"(5) STATE.—The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

"SEC. 402. STATE LAWS.

"Nothing in this title shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. The definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this title, including recognition or qualification of risk retention groups or purchasing groups.

"SEC. 403. RISK RETENTION GROUPS.

"(a) EXEMPTION.—Except as provided in this section, a risk retention group shall be exempt from the following:

"(1) A State law, rule, or order which makes unlawful, or regulates, directly or indirectly, the operation of a risk retention group.

"(2) A State law, rule, or order which requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong.

"(3) A State law, rule, or order which requires any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in the State.

"(4) A State law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

"(b) EXCEPTIONS.—

"(1) STATE LAWS GENERALLY APPLICABLE.—Nothing in subsection (a) shall be construed to affect the applicability of State laws generally applicable to persons or corporations. The State in which a risk retention group is chartered may regulate the formation and operation of the group.

"(2) STATE REGULATIONS NOT SUBJECT TO EXEMPTION.—Subsection (a) shall not apply to any

State law which requires a risk retention group to do, any of the following:

"(A) Comply with the unfair claim settlement practices law of the State.

"(B) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State.

"(C) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism.

"(D) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses.

"(E) Register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process.

"(F) Furnish, upon request, such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction.

"(G) Submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

"(i) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

"(ii) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group.

"(H) Comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (G).

"(c) APPLICATION OF EXEMPTIONS.—The exemptions specified in subsection (a) apply to—

"(1) pollution liability insurance coverage provided by a risk retention group for—

"(A) such group; or

"(B) any person who is a member of such group;

"(2) the sale of pollution liability insurance coverage for a risk retention group; and

"(3) the provision of insurance related services or management services for a risk retention group or any member of such a group.

"(d) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

"SEC. 404. PURCHASING GROUPS.

"(a) EXEMPTION.—Except as provided in this section, a purchasing group is exempt from the following:

"(1) A State law, rule, or order which prohibits the establishment of a purchasing group.

"(2) A State law, rule, or order which makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and ex-

pense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters.

"(3) A State law, rule, or order which prohibits a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection.

"(4) A State law, rule, or order which prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

"(5) A State law, rule, or order which requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form.

"(6) A State law, rule, or order which requires that a certain percentage of a purchasing group must obtain insurance on a group basis.

"(7) A State law, rule, or order which requires that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State.

"(8) A State law, rule, or order which otherwise discriminate against a purchasing group or any of its members.

"(b) APPLICATION OF EXEMPTIONS.—The exemptions specified in subsection (a) apply to the following:

"(1) Pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to—

"(A) a purchasing group; or

"(B) any person who is a member of a purchasing group.

"(2) The sale of any one of the following to a purchasing group or a member of the group:

"(A) Pollution liability insurance and comprehensive general liability coverage.

"(B) Insurance related services.

"(C) Management services.

"(c) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

"SEC. 405. APPLICABILITY OF SECURITIES LAWS.

"(a) OWNERSHIP INTERESTS.—The ownership interests of members of a risk retention group shall be considered to be—

"(1) exempted securities for purposes of section 5 of the Securities Act of 1933 and for purposes of section 12 of the Securities Exchange Act of 1934; and

"(2) securities for purposes of the provisions of section 17 of the Securities Act of 1933 and the provisions of section 10 of the Securities Exchange Act of 1934.

"(b) INVESTMENT COMPANY ACT.—A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

"(c) BLUE SKY LAW.—The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.".

SEC. 211. RELEASES ASSOCIATED WITH BRINE DISPOSAL.

Title I of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 130. RELEASES ASSOCIATED WITH BRINE DISPOSAL.

"(a) REVIEW.—The Administrator shall conduct a review of State programs to protect public health and the environment in States in which annular injection of brines associated with oil and gas production is permitted. The

review shall only be conducted in the case of States in which there are more than 2500 active wells at which annular injection is used as of the date of enactment of this section.

"(b) ENFORCEMENT.—

"(1) DETERMINATION.—If the Administrator determines, on the basis of the review conducted under subsection (a), that any State subject to such review is not adequately enforcing a State program to assure that human health or the environment will not be endangered by releases into the environment associated with the annular injection or surface disposal of such brines, the Administrator shall after notice to the State take or order such enforcement or corrective action in such State as may be necessary to assure protection of human health or the environment from endangerment by releases into the environment associated with such injection or other disposal practices.

"(2) CIVIL ACTION.—The Administrator may bring a civil action under this paragraph in the appropriate United States district court to require compliance with any enforcement or corrective action taken or ordered under paragraph (1) in any State referred to in subsection (a). The court may enter such judgment as protection of human health or the environment may

require, including the imposition of a civil penalty not to exceed $5,000 for each day of violation of any enforcement or corrective action taken or ordered by the Administrator.

"(c) DEADLINES.—The review required under subsection (a) shall be completed, and any enforcement or corrective action taken or ordered under subsection (b) commenced, no later than 18 months after the date of the enactment of this section.

"(d) DEFINITION.—For purposes of this section, the term 'annular injection' means the reinjection of brines associated with the production of oil or gas between the production and surface casings of a conventional oil or gas producing well."

SEC. 212. RESEARCH, DEVELOPMENT, AND DEMONSTRATION.

(a) PURPOSE.—The purposes of this section are as follows:

(1) To establish a comprehensive and coordinated Federal program of research, development, demonstration, and training for the purpose of promoting the development of alternative and innovative treatment technologies that can be used in response actions under the Superfund program, to provide incentives for the development and use of such technologies, and to improve the scientific capability to assess, detect and

evaluate the effects on and risks to human health from hazardous substances.

(2) To establish a basic university research and education program within the Department of Health and Human Services and a research, demonstration, and training program within the Environmental Protection Agency.

(3) To reserve certain funds from the Hazardous Substance Trust Fund to support a basic research program within the Department of Health and Human Services, and an applied and developmental research program within the Environmental Protection Agency.

(4) To enhance the Environmental Protection Agency's internal research capabilities related to Superfund activities, including site assessment and technology evaluation.

(5) To provide incentives for the development of alternative and innovative treatment technologies in a manner that supplements, but does not compete with or duplicate, private sector development of such technologies.

(b) AMENDMENT OF CERCLA.—Title III of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 311. RESEARCH, DEVELOPMENT, AND DEMONSTRATION.

"(a) HAZARDOUS SUBSTANCE RESEARCH AND TRAINING.—

"(1) AUTHORITIES OF SECRETARY.—The Secretary of Health and Human Services (hereinafter in this subsection referred to as the Secretary), in consultation with the Administrator, may conduct and support the following activities (through grants, cooperative agreements, and contracts):

"(A) Basic research (including epidemiologic and ecologic studies) in the following:

"(i) Advanced techniques for the detection, assessment, and evaluation of the effects on human health of hazardous substances.

"(ii) Methods to assess the risks to human health presented by hazardous substances.

"(iii) Methods and technologies to detect hazardous substances in the environment and basic biological, chemical, and physical methods to reduce the amount and toxicity of hazardous substances.

"(B) Training, including each of the following:

"(i) Short courses and continuing education for State and local health and envi-

ronmental agency personnel and others involved in hazardous waste management and control or in the evaluation of the risks to human health presented by hazardous substances.

"(ii) Graduate or advanced training in environmental and occupational health and safety and in the public health and engineering aspects of hazardous waste control.

"(iii) Graduate training in the geosciences, including hydrogeology, geological engineering, geophysics, geochemistry, and related fields necessary to meet professional personnel needs in the public and private sectors and to effectuate the purposes of this Act.

"(2) DIRECTOR OF NIEHS.—The Director of the National Institute for Environmental Health Sciences shall cooperate fully with those agencies specified in subparagraphs (A) through (H) of paragraph (5) in carrying out the purposes of this section.

"(3) RECIPIENTS OF GRANTS, ETC.—A grant, cooperative agreement, or contract may be made or entered into under paragraph (1) with an accredited institution of higher education. The institution may

carry out the research or training under the grant, cooperative agreement, or contract through contracts, including contracts with any of the following:

"(A) Generators of hazardous wastes.

"(B) Persons involved in the detection, assessment, evaluation, and treatment of hazardous substances.

"(C) Owners and operators of facilities at which hazardous substances are located.

"(D) State and local governments.

"(4) PROCEDURES.—In making grants and entering into cooperative agreements and contracts under this subsection, the Secretary shall act through the Director of the National Institute for Environmental Health Sciences. In considering the allocation of funds for training purposes, the Director shall ensure that at least one grant, cooperative agreement, or contract shall be awarded for training described in each of clauses (i), (ii), and (iii) of paragraph (1)(B). Where applicable, the Director may choose to operate training activities in cooperation with the Director of the National Institute for Occupational Safety and Health. The procedures applicable to grants and contracts under title IV of the Public Health Service Act shall be followed under this subsection.

"(5) ADVISORY COUNCIL.—To assist in the implementation of this subsection and to aid in the coordination of research and demonstration and training activities funded from the Fund under this section, the Secretary shall appoint an advisory council (hereinafter in this subsection referred to as the 'Advisory Council') which shall consist of the following:

"(A) The Assistant Administrator of the Environmental Protection Agency for Research and Development who shall serve as chairman.

"(B) The Assistant Administrator of the Environmental Protection Agency for Solid Waste and Emergency Response.

"(C) The Director for the Center for Environmental Health in the Centers for Disease Control.

"(D) The Director of the National Institute for Occupational Safety and Health.

"(E) The Director of the National Cancer Institute.

"(F) The Administrator of ATSDR.

"(G) The Director of the National Center for Toxicologic Research of the Food and Drug Administration.

"(H) The Director of Environmental Policy within the Office of the Secretary of Defense.

"(I) A representative of the toxic chemical waste producing industry.

"(J) A representative of entities engaged in the management of toxic chemical wastes.

"(K) Three representatives of institutions of higher education (one from the field of medicine with expertise in occupational health and safety, one from the field of chemical engineering with expertise in hazardous waste engineering, and one from the field of biological sciences with expertise in environmental science).

"(L) Two representatives from State and local health or environmental agencies.

"(M) One representative from community-based organizations concerned with hazardous substances.

"(N) One representative with scientific expertise from a national environmental organization concerned with hazardous substances.

"(6) PLANNING.—Within six months after the date of the enactment of this subsection, the Secretary, acting through the Director of the National Institute for Environmental Health Sciences, shall issue a plan

for the implementation of paragraph (1). The plan shall include priorities for actions under paragraph (1) and include research and training relevant to scientific and technological issues resulting from site specific hazardous substance response experience. The Secretary shall, to the maximum extent practicable, take appropriate steps to coordinate program activities under this plan with the activities of other Federal agencies in order to avoid duplication of effort. The plan shall be consistent with the need for the development of new technologies for meeting the goals of response actions in accordance with the provisions of this Act. The Advisory Council shall be provided an opportunity to review and comment on the plan and priorities and assist appropriate coordination among those agencies specified in subparagraphs (A) through (H) of paragraph (5).

"(b) ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGY RESEARCH AND DEMONSTRATION PROGRAM.—

"(1) ESTABLISHMENT.—The Administrator is authorized and directed to carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative treatment technologies (hereinafter in this subsection referred to as the 'program') which may be utilized in response actions to

achieve more permanent protection of human health and welfare and the environment.

*"(2) O*FFICE OF TECHNOLOGY DEMONSTRATION.*—The program shall be administered by the Administrator, acting through an office of technology demonstration established under this subsection and shall be coordinated with programs carried out by the Office of Solid Waste and Emergency Response and the Office of Research and Development. The Administrator shall establish such Office of Technology Demonstration within four months after the date of the enactment of this section. Such office shall be headed by a Director.*

*"(3) C*ONTRACTS AND GRANTS.*—In carrying out the program, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, persons, public entities, and nonprofit private entities which are exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1954. The Administrator shall, to the maximum extent possible, enter into appropriate cost sharing arrangements under this subsection.*

*"(4) U*SE OF SITES.*—In carrying out the program, the Administrator may arrange for the use of sites at which a response may be undertaken under*

section 104 for the purposes of carrying out research, testing, evaluation, development, and demonstrationprojects. Each such project shall be carried out under such terms and conditions as the Administrator shall require to assure the protection of human health and the environment and to assure adequate control by the Administrator of the research, testing, evaluation, development, and demonstration activities at the site.

"(5) DEMONSTRATION ASSISTANCE.—

"(A) PROGRAM COMPONENTS.—The demonstration assistance program shall include the following:

"(i) The publication of a solicitation and the evaluation of applications for demonstration projects utilizing alternative or innovative technologies.

"(ii) The selection of sites which are suitable for the testing and evaluation of innovative technologies.

"(iii) The development of detailed plans for innovative technology demonstration projects.

"(iv) The supervision of such demonstration projects and the providing of quality assurance for data obtained.

"(v) The evaluation of the results of alternative innovative technology demonstration projects and the determination of whether or not the technologies used are effective and feasible.

"(B) SOLICITATION.—Within 90 days after the date of the enactment of this section, and no less often than once every 12 months thereafter, the Administrator shall publish a solicitation for innovative or alternative technologies at a stage of development suitable for full-scale demonstrations at sites at which a response action may be undertaken under section 104. The purpose of any such project shall be to demonstrate the use of an alternative or innovative treatment technology with respect to hazardous substances or pollutants or contaminants which are located at the site or which are to be removed from the site. The solicitation notice shall prescribe information to be included in the application, including technical and economic data derived from the applicant's own research and development efforts, and other information sufficient to permit the Administrator to assess the technology's potential and the types of remedial action to which it may be applicable.

"(C) APPLICATIONS.—*Any person and any public or private nonprofit entity may submit an application to the Administrator in response to the solicitation. The application shall contain a proposed demonstration plan setting forth how and when the project is to be carried out and such other information as the Administrator may require.*

"(D) PROJECT SELECTION.—*In selecting technologies to be demonstrated, the Administrator shall fully review the applications submitted and shall consider at least the criteria specified in paragraph (7). The Administrator shall select or refuse to select a project for demonstration under this subsection within 90 days of receiving the completed application for such project. In the case of a refusal to select the project, the Administrator shall notify the applicant within such 90-day period of the reasons for his refusal.*

"(E) SITE SELECTION.—*The Administrator shall propose one or more sites at which a response may be undertaken under seciton 104 to be the location of any demonstration project under this subsection within 60 days after the close of the public comment period. After an opportunity* *for notice and public comment, the Administrator shall select such sites and projects. In selecting such site, the Administrator shall take into account the applicant's technical data and preferences either for onsite operation or for utilizing the site as a source of hazardous substances or pollutants or contaminants to be treated offsite.*

"(F) DEMONSTRATION PLAN.—Within 60 days after the selection of the site under this paragraph to be the location of a demonstration project, the Administrator shall establish a final demonstration plan for the project, based upon the demonstration plan contained in the application for the project. Such plan shall clearly set forth how and when the demonstration project will be carried out.

"(G) SUPERVISION AND TESTING.—Each demonstration project under this subsection shall be performed by the applicant, or by a person satisfactory to the applicant, under the supervision of the Administrator. The Administrator shall enter into a written agreement with each applicant granting the Administrator the responsibility and authority for testing procedures, quality control, monitoring, and other measurements necessary to

determine and evaluate the results of the demonstration project. The Administrator may pay the costs of testing, monitoring, quality control, and other measurements required by the Administrator to determine and evaluate the results of the demonstration project, and the limitations established by subparagraph (J) shall not apply to such costs.

"(H) PROJECT COMPLETION.—Each demonstration project under this subsection shall be completed within such time as is established in the demonstration plan.

"(I) EXTENSIONS.—The Administrator may extend any deadline established under this paragraph by mutual agreement with the applicant concerned.

"(J) FUNDING RESTRICTIONS.—The Administrator shall not provide any Federal assistance for any part of a full-scale field demonstration project under this subsection to any applicant unless such applicant can demonstrate that it cannot obtain appropriate private financing on reasonable terms and conditions sufficient to carry out such demonstration project without such Federal assistance. The total Federal funds for any full-scale field demonstration project under

this subsection shall not exceed 50 percent of the total cost of such project estimated at the time of the award of such assistance. The Administrator shall not expend more than $10,000,000 for assistance under the program in any fiscal year and shall not expend more than $3,000,000 for any single project.

"(6) FIELD DEMONSTRATIONS.—In carrying out the program, the Administrator shall initiate or cause to be initiated at least 10 field demonstration projects of alternative or innovative treatment technologies at sites at which a response may be undertaken under section 104, in fiscal year 1987 and each of the succeeding three fiscal years. If the Administrator determines that 10 field demonstration projects under this subsection cannot be initiated consistent with the criteria set forth in paragraph (7) in any of such fiscal years, the Administrator shall transmit to the appropriate committees of Congress a report explaining the reasons for his inability to conduct such demonstration projects.

"(7) CRITERIA.—In selecting technologies to be demonstrated under this subsection, the Administrator shall, consistent with the protection of human health

and the environment, consider each of the following criteria:

"(A) The potential for contributing to solutions to those waste problems which pose the greatest threat to human health, which cannot be adequately controlled under present technologies, or which otherwise pose significant management difficulties.

"(B) The availability of technologies which have been sufficiently developed for field demonstration and which are likely to be cost-effective and reliable.

"(C) The availability and suitability of sites for demonstrating such technologies, taking into account the physical, biological, chemical, and geological characteristics of the sites, the extent and type of contamination found at the site, and the capability to conduct demonstration projects in such a manner as to assure the protection of human health and the environment.

"(D) The likelihood that the data to be generated from the demonstration project at the site will be applicable to other sites.

"(8) TECHNOLOGY TRANSFER.—In carrying out the program, the Administrator shall conduct a technol-

ogy transfer program including the development, collection, evaluation, coordination and dissemination of information relating to the utilization of alternative or innovative treatment technologies for remedial actions. The Administrator shall establish and maintain a central reference library for such information. The information maintained by the Administrator shall be made available to the public, subject to the provisions of section 552 of title 5 of the United States Code and section 1905 of title 18 of the United States Code, and to other Government agencies in a manner that will facilitate its dissemination; except, that upon a showing satisfactory to the Administrator by any person that any information, or portion of this subsection by the Administrator directly or indirectly from such person, would, if made public, divulge—

"(A) trade secrets; or

"(B) other proprietary information of such person,

the Administrator shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18 of the United States Code. This subsection is not authority to withhold information from Congress or any committee of Congress upon the request of the chairman of such committee.

"(9) T*RAINING.—The Administrator is authorized and directed to carry out, through the Office of Technology Demonstration, a program of training and an evaluation of training needs for each of the following:*

"(A) Training in the procedures for the handling and removal of hazardous substances for employees who handle hazardous substances.

"(B) Training in the management of facilities at which hazardous substances are located and in the evaluation of the hazards to human health presented by such facilities for State and local health and environment agency personnel.

"(10) D*EFINITION.—For purposes of this subsection, the term 'alternative or innovative treatment technologies' means those technologies which permanently alter the composition of hazardous waste through chemical, biological, or physical means so as to significantly reduce the toxicity, mobility, or volume (or any combination thereof) of the hazardous waste or contaminated materials being treated. The term also includes technologies that characterize or assess the extent of contamination, the chemical and physical character of the contaminants, and the stresses imposed by the contami-*

nants on complex ecosystems at sites. The term also includes proprietary or patented methods.

"(c) HAZARDOUS WASTE RESEARCH.—The Administrator may conduct and support, through grants, cooperative agreements, and contracts, research with respect to the detection, assessment, and evaluation of the effects on and risks to human health of hazardous substances and detection of hazardous substances in the environment. The Administrator shall coordinate such research with the Secretary of Health and Human Services, acting through the advisory council established under this section, in order to avoid duplication of effort.

"(d) UNIVERSITY HAZARDOUS SUBSTANCE RESEARCH CENTERS.—

"(1) GRANT PROGRAM.—The Administrator shall make grants to institutions of higher learning to establish and operate not less than five hazardous substance research centers in the United States. In carrying out the program under this subsection, the Administrator should seek to have established and operated ten hazardous substance research centers in the United States.

"(2) RESPONSIBILITIES OF CENTERS.—The responsibilities of each hazardous substance research center established under this subsection shall include, but not be limited to, the conduct of research and train-

ing relating to the manufacture, use, transportation, disposal, and management of hazardous substances and publication and dissemination of the results of such research.

"(3) APPLICATIONS.—Any institution of higher learning interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

"(4) SELECTION CRITERIA.—The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

"(A) The hazardous substance research center shall be located in a State which is representative of the needs of the region in which such State is located for improved hazardous waste management.

"(B) The grant recipient shall be located in an area which has experienced problems with hazardous substance management.

"(C) There is available to the grant recipient for carrying out this subsection demonstrated research resources.

"(D) The capability of the grant recipient to provide leadership in making national and region-

al contributions to the solution of both long-range and immediate hazardous substance management problems.

"(E) The grant recipient shall make a commitment to support ongoing hazardous substance research programs with budgeted institutional funds of at least $100,000 per year.

"(F) The grant recipient shall have an interdisciplinary staff with demonstrated expertise in hazardous substance management and research.

"(G) The grant recipient shall have a demonstrated ability to disseminate results of hazardous substance research and educational programs through an interdisciplinary continuing education program.

"(H) The projects which the grant recipient proposes to carry out under the grant are necessary and appropriate.

"(5) MAINTENANCE OF EFFORT.—No grant may be made under this subsection in any fiscal year unless the recipient of such grant enters into such agreements with the Administrator as the Administrator may require to ensure that such recipient will maintain its aggregate expenditures from all other sources for establishing and operating a regional haz-

ardous substance research center and related research activities at or above the average level of such expenditures in its two fiscal years preceding the date of the enactment of this subsection.

"(6) FEDERAL SHARE.—The Federal share of a grant under this subsection shall not exceed 80 percent of the costs of establishing and operating the regional hazardous substance research center and related research activities carried out by the grant recipient.

"(7) LIMITATION ON USE OF FUNDS.—No funds made available to carry out this subsection shall be used for acquisition of real property (including buildings) or construction of any building.

"(8) ADMINISTRATION THROUGH THE OFFICE OF THE ADMINISTRATOR.—Administrative responsibility for carrying out this subsection shall be in the Office of the Administrator.

"(9) EQUITABLE DISTRIBUTION OF FUNDS.—The Administrator shall allocate funds made available to carry out this subsection equitably among the regions of the United States.

"(10) TECHNOLOGY TRANSFER ACTIVITIES.—Not less than five percent of the funds made available to carry out this subsection for any fiscal year shall be available to carry out technology transfer activities.

"(e) REPORT TO CONGRESS.—At the time of the submission of the annual budget request to Congress, the Administrator shall submit to the appropriate committees of the House of Representatives and the Senate and to the advisory council established under subsection (a), a report on the progress of the research, development, and demonstration program authorized by subsection (b), including an evaluation of each demonstration project completed in the preceding fiscal year, findings with respect to the efficacy of such demonstrated technologies in achieving permanent and significant reductions in risk from hazardous wastes, the costs of such demonstration projects, and the potential applicability of, and projected costs for, such technologies at other hazardous substance sites.

"(f) SAVING PROVISION.—Nothing in this section shall be construed to affect the provisions of the Solid Waste Disposal Act.

"(g) SMALL BUSINESS PARTICIPATION.—The Administrator shall ensure, to the maximum extent practicable, an adequate opportunity for small business participation in the program established by subsection (b).

"(h) BUDGET AUTHORITY FOR CONTRACTS.—Any new spending authority described in subsection (c)(2)(A) of section 401 of the Congressional Budget Act of 1974 which is provided under this section shall be effective for any

fiscal year only to such extent or in such amounts as are provided in appropriation Acts.".

(c) TESTING PROCEDURES AND STANDARDS.—The Administrator shall revise and republish the National Contingency Plan required by section 105 of CERCLA. The revisions shall include standards and testing procedures by which alternative or innovative treatment technologies can be determined to be appropriate for use in response actions under title I of CERCLA. The revision shall be made within one year after the date of enactment of this Act and after notice and opportunity for public comment.

(d) RECOVERY PROCESS.—For purposes of this subsection, the Administrator may approve a process, the primary purpose of which is to recover vanadium, cobalt, nickel, molybdenum, and alumina from waste in any form for commercial sale. If the Administrator approves such a process, any person who provides such waste to another person to carry out such process shall not be liable under CERCLA for any act or omission of a person other than the person who so provides the waste, which act or omission occurs after the waste is so provided.

SEC. 213. DEPARTMENT OF DEFENSE ENVIRONMENTAL RESTORATION PROGRAM.

(a) IN GENERAL.—(1) Title 10, United States Code, is amended—

(A) by redesignating section 2701 as section 2721; and

(B) by inserting after chapter 159 the following new chapter:

"CHAPTER 160—ENVIRONMENTAL RESTORATION

"Sec.
"2701. Environmental restoration program.
"2702. Research, development, and demonstration program.
"2703. Environmental restoration transfer account.
"2704. Commonly found unregulated hazardous substances.
"2705. Notice of environmental restoration activities.
"2706. Annual report to Congress.
"2707. Definitions.

"§ 2701. Environmental restoration program

"(a) ENVIRONMENTAL RESTORATION PROGRAM.—

"(1) IN GENERAL.—The Secretary of Defense shall carry out a program of environmental restoration at facilities under the jurisdiction of the Secretary. The program shall be known as the 'Defense Environmental Restoration Program'.

"(2) APPLICATION OF SECTION 120 OF CERCLA.—Activities of the program described in subsection (b)(1) shall be carried out subject to section 120 (relating to Federal facilities) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this chapter referred to as 'CERCLA').

"(3) CONSULTATION WITH EPA.—The program shall be carried out in consultation with the Administrator of the Environmental Protection Agency.

"(4) ADMINISTRATIVE OFFICE WITHIN OSD.—The Secretary shall identify an office within the Office of the Secretary which shall have responsibility for carrying out the program.

"(b) PROGRAM PURPOSES.—The purposes of the program shall include the identification, investigation, and cleanup of hazardous substances, pollutants, and contaminants at sites under the jurisdiction of the Secretary through response and remedial actions covered by CERCLA.

"(c) RESPONSIBILITY FOR RESPONSE ACTIONS.—

"(1) BASIC RESPONSIBILITY.—The Secretary shall carry out (in accordance with the provisions of this chapter and CERCLA) all response actions with respect to releases of hazardous substances from each of the following:

"(A) Each facility or site owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary.

"(B) Each facility or site which was under the administrative jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by

the United States at the time of actions leading to contamination by hazardous substances.

"(C) Each vessel of the Department of Defense, including vessels owned or bareboat chartered and operated.

"(2) OTHER RESPONSIBLE PARTIES.—Paragraph (1) shall not apply to a removal or remedial action if the Administrator has provided for response action by a potentially responsible person in accordance with section 122 of CERCLA.

"(3) STATE FEES AND CHARGES.—The Secretary shall pay fees and charges imposed by State authorities for permit services for the disposal of hazardous substances on lands which are under the jurisdiction of the Secretary to the same extent that nongovernmental entities are required to pay fees and charges imposed by State authorities for permit services. The preceding sentence shall not apply with respect to a payment that is the responsibility of a lessee, contractor, or other private person.

"(d) SERVICES OF OTHER AGENCIES.—The Secretary may enter into agreements on a reimbursable basis with any other Federal agency, and on a reimbursable or other basis with any State or local government agency, to obtain the services of that agency to assist the Secretary in

carrying out any of the Secretary's responsibilities under this section. Services which may be obtained under this subsection include the identification, investigation, and cleanup of any off-site contamination possibly resulting from the release of a hazardous substance or waste at a facility under the Secretary's jurisdiction.

"(e) LIABILITY OF RESPONSE ACTION CONTRACTORS.—The provisions of section 119 of CERCLA apply to for response action contractors (as defined in that section) who carry out response actions under this section.

"§ 2702. Research, development, and demonstration program

"(a) PROGRAM.—As part of the Defense Environmental Restoration Program, the Secretary of Defense shall carry out a program of research, development, and demonstration with respect to hazardous wastes. The program shall be carried out in consultation and cooperation with the Administrator. The program shall include research, development, and demonstration with respect to each of the following:

"(1) Means of reducing the quantities of hazardous waste generated by activities and facilities under the jurisdiction of the Secretary.

"(2) Methods of treatment, disposal, and management (including recycling and detoxifying) of hazardous waste of the types and quantities generated by cur-

rent and former activities of the Secretary and facilities currently and formerly under the jurisdiction of the Secretary.

"(3) Identifying more cost-effective technologies for cleanup of hazardous substances.

"(4) Toxicological data collection and methodology on risk of exposure to hazardous waste generated by the Department of Defense.

"(5) The testing, evaluation, and field demonstration of any innovative technology, processes, equipment, or related training devices which may contribute to establishment of new methods to control, contain, and treat hazardous substances, to be carried out in consultation and cooperation with, and to the extent possible in the same manner as, testing, evaluation, and field demonstration carried out by the Administrator, acting through the Office of Technology Demonstration of the Office of Emergency and Remedial Response of the Environmental Protection Agency.

"(b) SPECIAL PERMIT UNDER SECTION 3005(g) OF RCRA.—The Administrator may use the authorities of section 3005(g) of the Solid Waste Disposal Act to issue a permit for testing and evaluation which receives support under this section.

“(c) CONTRACTS AND GRANTS.—The Secretary may enter into contracts and cooperative agreements with, and make grants to, universities, public and private profit and nonprofit entities, and other persons to carry out the research, development, and demonstration authorized under this section. Such contracts may be entered into only to the extent that appropriated funds are available for that purpose.

“(d) INFORMATION COLLECTION AND DISSEMINATION.—

“(1) IN GENERAL.—The Secretary shall develop, collect, evaluate, and disseminate information related to the use (or potential use) of the treatment, disposal, and management technologies that are researched, developed, and demonstrated under this section.

“(2) ROLE OF EPA.—The functions of the Secretary under paragraph (1) shall be carried out in cooperation and consultation with the Administrator. To the extent appropriate and agreed upon by the Administrator and the Secretary, the Administrator shall evaluate and disseminate such information.

“§ 2703. Environmental restoration transfer account

“(a) ESTABLISHMENT OF TRANSFER ACCOUNT.—

“(1) ESTABLISHMENT.—There is hereby established in the Department of Defense an account to be

known as the 'Defense Environmental Restoration Account' (hereinafter in this section referred to as the 'transfer account'). All sums appropriated to carry out the functions of the Secretary of Defense relating to environmental restoration under this chapter or any other Act shall be appropriated to the transfer account.

"(2) REQUIREMENT OF AUTHORIZATION OF APPROPRIATIONS.—No funds may be appropriated to the transfer account unless such sums have been specifically authorized by law.

"(3) AVAILABILITY OF FUNDS IN TRANSFER ACCOUNT.—Amounts appropriated to the transfer account shall remain available until transferred under subsection (b).

"(b) AUTHORITY TO TRANSFER TO OTHER DOD ACCOUNTS.—Amounts in the transfer account shall be available to be transferred by the Secretary to any appropriation account or fund of the Department for obligation from that account or fund. Funds so transferred shall be merged with and available for the same purposes and for the same period as the account or fund to which transferred.

"(c) OBLIGATION OF TRANSFERRED AMOUNTS.—Funds transferred under subsection (b) may only be obligated or expended from the account or fund to which transferred in order to carry out the functions of the Secretary

under this Act or environmental restoration functions under any other Act.

"(d) BUDGET REPORTS.—In proposing the Budget for any fiscal year pursuant to section 1105 of title 31, the President shall set forth separately the amount requested for environmental restoration programs of the Department of Defense under this chapter or any other Act.

"(e) AMOUNTS RECOVERED UNDER CERCLA.—Amounts recovered under section 107 of CERCLA for response actions of the Secretary shall be credited to the transfer account.

"§ 2704. Commonly found unregulated hazardous substances

"(a) NOTICE TO HHS.—

"(1) IN GENERAL.—The Secretary of Defense shall notify the Secretary of Health and Human Services of the hazardous substances which the Secretary of Defense determines to be the most commonly found unregulated hazardous substances at facilities under his jurisdiction. The notification shall be of not less than the 25 most widely used such substances.

"(2) DEFINITION.—In this subsection, 'unregulated hazardous substance' means a hazardous substance—

"(A) for which no standard is in effect under the Toxic Substances Control Act, the Safe

Drinking Water Act, the Clean Air Act, or the Clean Water Act; and

"(B) for which no water quality criteria are in effect under any provision of the Clean Water Act.

"(b) Toxicological Profiles.—The Secretary of Health and Human Services shall take such steps as necessary to ensure the timely preparation of toxicological profiles of each of the substances of which the Secretary is notified under subsection (a). The profiles of such substances shall include each of the following:

"(1) The examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

"(2) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

"(3) Where appropriate, toxicological testing directed toward determining the maximum exposure level of a hazardous substance that is safe for humans.

"(c) DOD Support for Toxicological Profiles.—The Secretary of Defense shall transfer to the Secretary of Health and Human Services such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary for the preparation of such toxicological profiles under subsection (b). The Secretary of Defense and the Secretary of Health and Human Services shall enter into a memorandum of understanding regarding the manner in which this section shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this section.

"(d) EPA Health Advisories.—

"(1) Preparation.—At the request of the Secretary of Defense, the Administrator shall in a timely manner prepare health advisories on hazardous substances. Such an advisory shall be prepared on each hazardous substance—

"(A) for which no advisory exists;

"(B) which is found to threaten drinking water; and

"(C) which is emanating from facilities under the administrative jurisdiction of the Secretary.

"(2) CONTENT OF HEALTH ADVISORIES.—Such health advisories shall provide specific advice on the levels of contaminants in drinking water at which adverse health effects would not be anticipated and which include a margin of safety so as to protect the most sensitive members of the population at risk. The advisories shall provide data on one-day, 10-day, and longer-term exposure periods where available toxicological data exist.

"(3) DOD SUPPORT FOR HEALTH ADVISORIES.—The Secretary of Defense shall transfer to the Administrator such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary for the preparation of such health advisories. The Secretary and the Administrator shall enter into a memorandum of understanding regarding the manner in which this subsection shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this subsection.

"(e) CROSS REFERENCE.—Section 116 of CERCLA applies to facilities under the jurisdiction of the Secretary of Defense in the manner prescribed in that section for other Federal facilities.

"(f) FUNCTIONS OF HHS TO BE CARRIED OUT THROUGH ATSDR.—The functions of the Secretary of Health and Human Services under this section shall be carried out through the Administrator of the Agency of Toxic Substances and Disease Registry of the Department of Health and Human Services established under section 116 of CERCLA.

"§ 2705. Notice of environmental restoration activities

"(a) EXPEDITED NOTICE.—The Secretary of Defense shall take such actions as necessary to ensure that the regional offices of the Environmental Protection Agency and appropriate State and local authorities for the State in which a facility under the Secretary's jurisdiction is located receive prompt notice of each of the following:

"(1) The discovery of releases or threatened releases of hazardous substances at the facility.

"(2) The extent of the threat to public health and the environment which may be associated with any such release or threatened release.

"(3) Proposals made by the Secretary to carry out response actions with respect to any such release or threatened release.

"(4) The initiation of any response action with respect to such release or threatened release and the commencement of each distinct phase of such activities.

"(b) COMMENT BY EPA AND STATE AND LOCAL AUTHORITIES.—

"(1) RELEASE NOTICES.—The Secretary shall ensure that the Administrator of the Environmental Protection Agency and appropriate State and local officials have an adequate opportunity to comment on notices under paragraphs (1) and (2) of subsection (a).

"(2) PROPOSALS FOR RESPONSE ACTIONS.—The Secretary shall require that an adequate opportunity for timely review and comment be afforded to the Administrator and to appropriate State and local officials after making a proposal referred to in subsection (a)(3) and before undertaking an activity or action referred to in subsection (a)(4). The preceding sentence does not apply if the action is an emergency removal taken because of imminent and substantial endangerment to human health or the environment and consultation would be impractical.

"(c) TECHNICAL REVIEW COMMITTEE.—Whenever possible and practical, the Secretary shall establish a technical review committee to review and comment on Department of Defense actions and proposed actions with respect to releases or threatened releases of hazardous substances at installations. Members of any such committee shall include at least one representative of the Secretary, the Administrator, and appropriate State and local authorities and shall include a public representative of the community involved.

"§ 2706. Annual report to Congress

"(a) REPORT ON PROGRESS IN IMPLEMENTATION.—The Secretary of Defense shall submit to Congress a report each fiscal year describing the progress made by the Secretary during the preceding fiscal year in implementing the requirements of this chapter.

"(b) MATTERS TO BE INCLUDED.—Each such report shall include the following:

"(1) A statement for each facility under the jurisdiction of the Secretary of the number of individual facilities at such installation at which a hazardous substance has been identified.

"(2) The status of response actions contemplated or undertaken at each such facility.

"(3) The specific cost estimates and budgetary proposals involving response actions contemplated or undertaken at each such facility.

"(4) A report on progress on conducting response actions at sites other than sites on the National Priority List.

"§ 2707. Definitions

"In this chapter:

"(1) 'Environment', 'facility', 'hazardous substance', 'person', 'release', 'removal', 'response', 'disposal', and 'hazardous waste' have the meanings given those terms in section 101 of CERCLA.

"(2) 'Administrator' means the Administrator of the Environmental Protection Agency.".

(2) The table of chapters at the beginning of subtitle A. and at the beginning of part IV of subtitle A, of such title are each amended by inserting after the item relating to chapter 159 the following new item:

"160. Environmental Restoration .... 2701".

(b) MILITARY CONSTRUCTION PROJECTS.—(1) Chapter 169 of title 10, United States Code, is amended by inserting at the end of subchapter I the following new section:

"§ 2810. Construction projects for environmental response actions

"(a) Subject to subsection (b), the Secretary of Defense may carry out a military construction project not otherwise authorized by law (or may authorize the Secretary of a military department to carry out such a project) if the Secretary of Defense determines that the project is necessary to carry out a response action under chapter 160 of this title or the Comprehensive Environmental Response, Compensation, and Liability Act.

"(b)(1) When a decision is made to carry out a military construction project under this section, the Secretary of Defense shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include—

"(A) the justification for the project and the current estimate of the cost of the project; and

"(B) the justification for carrying out the project under this section.

"(2) The project may then be carried out only—

"(A) after the end of the 21-day period beginning on the date the notification is received by such committees; or

"(B) after each such committee has approved the project, if the committees approve the project before the end of that period.

"(c) In this section, 'response action' has the meaning given that term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act.".

(2) The table of sections at the beginning of subchapter I of such chapter is amended by adding at the end thereof the following new item:

"2810. Construction projects for environmental response actions.".

(c) EFFECTIVE DATE.—Section 2703(a)(2) of title 10, United States Code, as added by subsection (a), shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1986.

SEC. 214. OVERSIGHT AND REPORTING REQUIREMENTS.

Section 301 of CERCLA is amended by adding at the end thereof the following new subsection:

"(h) OVERSIGHT AND REPORTING REQUIREMENTS.—

"(1) CONGRESSIONAL OVERSIGHT.—The appropriate authorizing committees of Congress shall conduct oversight hearings not less often than annually to ensure that this Act is being implemented according to the purposes of this Act and congressional intent in enacting this Act.

"(2) ANNUAL REPORT BY EPA.—The Administrator of the Environmental Protection Agency shall submit a report annually to the Congress on the progress achieved in implementing this Act. In addi-

tion such report shall specifically include each of the following—

"(A) A detailed description of each feasibility study carried out at a facility under title I of this Act.

"(B) The status and estimated date of completion of each such study.

"(C) Notice of each such study which will not meet a previously published schedule for completion and the new estimated date for completion.

"(D) An evaluation of newly developed feasible and achievable permanent treatment technologies.

"(E) Progress made in reducing the number of facilities in the Interim Category on the National Priorities List.".

SEC. 215. RADON GAS.

(a) NATIONAL ASSESSMENT.—The Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the "Administrator") shall—

(1) identify the locations in populated areas in the United States where radon gas and radon daughters are forming from naturally occurring deposits of uranium and are collecting in residences and other structures;

(2) assess for each location identified under paragraph (1) the amounts of radon gas and radon daughters that are forming and the amounts that are present in residences and other structures;

(3) determine the level of radon gas and radon daughters which poses a threat to human health and assess for each location identified under paragraph (1) the extent of the threat to human health; and

(4) determine methods of reducing or eliminating the threat to human health of radon gas and radon daughters.

The Administrator shall submit a report to Congress on the results of the assessment conducted under this subsection not later that one year after the date of the enactment of this Act.

(b) DEMONSTRATION PROGRAM.—

(1) IN GENERAL.—The Administrator shall conduct a demonstration program to test methods of reducing or eliminating the threat to human health of radon gas and radon daughters. Such methods shall include venting of residences and other structures and any other methods the Administrator determines may be effective in reducing or eliminating such threat. The demonstration program under this section shall be conducted at the Reading Prong, Pennsylvania and New

Jersey, and at such other sites as the Administrator considers appropriate.

(2) REPORTS.—The Administrator shall submit interim reports not later than September 30, 1986, and September 30, 1987, on the status of the demonstration program carried out under this subsection. The Administrator shall submit a final report on the results of such program not later than December 31, 1988.

(3) AUTHORIZATION.—There is authorized to be appropriated for the fiscal years 1986 through 1988 a total of $2,000,000 to carry out this subsection.

SEC. 216. STUDY OF JOINT USE OF TRUCKS.

(a) STUDY.—The Administrator, in consultation with the Secretary of Transportation, shall conduct a study of problems associated with the use of any vehicle for purposes other than the transportation of hazardous substances when that vehicle is used at other times for the transportation of hazardous substances. At a minimum, the Administrator shall consider—

(1) whether such joint use of vehicles should be prohibited, and

(2) whether, if such joint use is permitted, special safeguards should be taken to minimize threats to public health and the environment.

(b) REPORT.—*The Administrator shall submit a report, along with recommendations, to Congress on the results of the study conducted under subsection (a) not later than 180 days after the date of the enactment of this Act.*

SEC. 217. LOVE CANAL PROPERTY ACQUISITION.

(a) CONGRESSIONAL FINDINGS.—

(1) The area known as Love Canal located in the city of Niagara Falls and the town of Wheatfield, New York, was the first toxic waste site to receive national attention. As a result of that attention Congress investigated the problems associated with toxic waste sites and enacted Superfund legislation to deal with these problems.

(2) Because Love Canal came to the Nation's attention prior to the passage of Superfund and because the Superfund was not available to compensate for all of the hardships endured by the citizens in the area, Congress has determined that special provisions are required. These provisions do not affect the lawfulness, implementation or selection of any other response actions at Love Canal or at any other facilities.

(b) AMENDMENT OF SUPERFUND.—*Title III of the Comprehensive Environmental Response Compensation and Liability Act of 1980 is amended by adding the following new section at the end thereof:*

"SEC. 310. LOVE CANAL PROPERTY ACQUISITION.

"(a) ACQUISITION OF PROPERTY IN EMERGENCY DECLARATION AREA.—The Administrator of the Environmental Protection Agency (hereinafter referred to as the 'Administrator') may make grants not to exceed $2,500,000 to the State of New York (or to any duly constituted public agency or authority thereof) for purposes of acquisition of private property in the Love Canal Emergency Declaration Area. Such acquisition shall include (but shall not be limited to) all private property within the Emergency Declaration Area, including non-owner occupied residential properties, commercial, industrial, public, religious, non-profit, and vacant properties.

"(b) PROCEDURES FOR ACQUISITION.—No property shall be acquired pursuant to this section unless the property owner voluntarily agrees to such acquisition. Compensation for any property acquired pursuant to this section shall be based upon the fair market value of the property as it existed prior to the emergency declaration. Valuation procedures for property acquired with funds provided under this section shall be in accordance with those set forth in the agreement entered into between the New York State Disaster Preparedness Commission and the Love Canal Revitalization Agency on October 9, 1980.

"(c) STATE OWNERSHIP.—The Administrator shall not provide any funds under this section for the acquisition

of any properties pursuant to this section unless a public agency or authority of the State of New York first enters into a cooperative agreement with the Administrator providing assurances deemed adequate by the Administrator that the State or an agency created under the laws of the State shall take title to the properties to be so acquired.

"(d) MAINTENANCE OF PROPERTY.—The Administrator shall enter into a cooperative agreement with an appropriate public agency or authority of the State of New York under which the Administrator shall maintain or arrange for the maintenance of all properties within the Emergency Declaration Area that have been acquired by any public agency or authority of the State. Ninety (90) percent of the costs of such maintenance shall be paid by the Administrator. The remaining portion of such costs shall be paid by the State (unless a credit is available under section 104(c). The Administrator is authorized, in his discretion, to provide technical assistance to any public agency or authority of the State of New York in order to implement the recommendations of the habitability and land-use study in order to put the land within the Emergency Declaration Area to its best use.

"(e) HABITABILITY AND LAND USE STUDY.—The Administrator shall conduct or cause to be conducted a habitability and land-use study. The study shall (1) assess the

risks associated with inhabiting of the Love Canal Emergency Declaration Area; (2) compare the level of hazardous waste contamination in that Area to that present in other comparable communities; and (3) assess the potential uses of the land within the Emergency Declaration Area, including but not limited to residential, industrial, commercial and recreational, and the risks associated with such potential uses. The Administrator shall publish the findings of such study and shall work with the State of New York to develop recommendations based upon the results of such study.

"(f) FUNDING.—For purposes of section 111 and 221(c) of this Act, the expenditures authorized by this section shall be treated as a cost specified in section 111(c).

"(g) RESPONSE.—The provisions of this section shall not affect the implementation of other response actions within the Emergency Declaration Area that the Administrator has determined (before enactment of this section) to be necessary to protect the public health or welfare or the environment.

"(h) DEFINITIONS.—For purposes of this section:

"(1) EMERGENCY DECLARATION AREA.—The terms 'Emergency Declaration Area' and 'Love Canal Emergency Declaration Area' mean the Emergency Declaration Area as defined in section 950, paragraph

(2) of the General Municipal Law of the State of New York, Chapter 259, Laws of 1980, as in effect on the date of the enactment of this section.

"(2) Private property.—As used in subsection (a), the term 'private property' means all property which is not owned by a department, agency, or instrumentality of (A) the United States or (B) the State of New York (or any public agency or authority thereof).

TITLE III—EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW

Subtitle A—Emergency Planning

SEC. 301. ESTABLISHMENT OF STATE COMMISSIONS AND LOCAL COMMITTEES.

(a) Establishment of State Emergency Response Commissions.—Not later than six months after the date of the enactment of this title, the Governor of each State shall appoint an emergency response commission. The Governor may designate as the emergency response commission one or more existing emergency response organizations that are State-sponsored or appointed. The Governor shall, to the extent practicable, appoint persons to the commission who have technical expertise in the emergency response field. The emergency response commission of a State shall appoint local emergency response committees under subsection (b) and shall supervise and coordinate the activities of

such committees. If the Governor of any State does not designate a State commission within such period, the Administrator shall operate as the State commission until the Governor makes such designation and may make the initial designations and appointments under subsection (b).

(b) Establishment of Local Emergency Response Committees.—

(1) In general.—Not later than six months after the date of the establishment of a State commission under subsection (a), the commission shall—

(A) designate political subdivisions or combinations of political subdivisions as emergency response districts for purposes of this title; and

(B) appoint a local emergency response committee for each emergency response district designated under subparagraph (A).

(2) Interstate agreements.—Pursuant to interstate agreements, political subdivisions in more than one State may be included in an emergency response district under paragraph (1)(A) and members of an emergency response committee may be designated under paragraph (1)(B) from each State.

(c) Composition of Local Committees.—A local emergency response committee shall include representatives from each of the following groups or organizations: elected

State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and covered operators.

(d) OFFICERS; AD HOC COMMITTEES.—A local emergency response committee may elect such officers and spokesmen and appoint such ad hoc committees of interested citizens, and request such assistance of State and local officials, as it deems necessary to assist it in carrying out its duties.

(e) REVISIONS.—The emergency response commission of a State may revise its designations and appointments under subsection (b) with respect to any local emergency response committee as it deems appropriate.

SEC. 302. COMPREHENSIVE EMERGENCY RESPONSE PLANS.

(a) PLAN REQUIRED.—Not later than 24 months after the date of the enactment of this title, each local emergency response committee shall complete an emergency response plan designed to minimize the injury to human health and the environment which could result from any hazardous substance emergency arising out of activities carried out at any covered facility located in the emergency response district for which such committee is established. The plan shall be integrated with existing emergency response plans at the discretion of the committee. A covered operator

shall submit to the local emergency response committee any information in addition to the information required under section 311 (other than information which may be withheld from disclosure under section 322), with respect to a covered facility that the committee may request for purposes of completing such plan. The committee may revise such plan as necessary to protect human health and the environment.

(b) PLAN PROVISIONS.—Each plan required under this section shall include each of the following at a minimum:

(1) Designation of one or more State or local officials whom the covered operator will notify in case of a hazardous substance emergency.

(2) Designation of the names and emergency telephone numbers of personnel employed by the covered operator who should be contacted in case of a hazardous substance emergency.

(3) A description of measures which should be taken to mitigate and minimize the risks to human health and the environment posed by a hazardous substance emergency.

(4) A description of a system or method and procedures and communications systems (including alarm and warning systems) to notify members of the affected public of a hazardous substance emergency.

(5) A description of emergency equipment and facilities in the community, and at each facility in the community at which a substantial inventory of a hazardous substance is maintained, and an identification of the persons responsible for such equipment and facilities.

(6) Emergency evacuation plans, as well as an evaluation of the adequacy of existing transportation facilities to accomplish an evacuation.

(7) A description of training programs and drill schedules to be used for purposes of emergency response planning and preparedness.

(8) An evaluation of medical, police, health, and firefighting resources available in the event of a hazardous substance emergency and recommendations, if appropriate, concerning what additional resources should be developed by State or local governments.

(c) REVIEW BY THE GOVERNOR.—After completion of a plan under subsection (a) for an emergency response district, the local emergency response committee shall submit a copy of such plan to the Governor of each State in which such district is located. The Governor or Governors shall review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure co-

ordination of such plan with emergency response plans of other emergency response districts.

(d) ASSISTANCE.—Upon request of a local emergency response committee, the Administrator shall provide technical assistance in developing and implementing an emergency response plan.

SUBTITLE B—NOTIFICATION REQUIREMENTS

SEC. 311. BASIC NOTIFICATION REQUIREMENTS.

(a) SUBMISSION OF MATERIAL SAFETY DATA SHEETS.—

(1) BASIC REQUIREMENT.—The owner or operator of any facility at which any hazardous chemical is produced, used, or stored shall submit a material safety data sheet for each such chemical to the appropriate local emergency response committee and such local and State officials as may have been designated to receive such sheet by such committee.

(2) FURNISHING OF SHEETS TO OTHER OWNERS AND OPERATORS.—

(A) IN GENERAL.—Each owner or operator of a facility who is required to submit a material safety data sheet for a hazardous chemical under paragraph (1) and who supplies such a chemical to any other such owner or operator shall furnish such sheet, and any revised sheet under paragraph

(3), to such other facility owner or operator. The initial sheet shall be furnished before, or at the time of, the first shipment of such chemical to such other owner or operator. Any revised sheet shall be furnished before, or at the time of, the first shipment of such chemical to such other owner or operator after such sheet is revised.

(B) UNAVAILABILITY FROM MANUFACTURER OR IMPORTER.—The requirements of this subsection shall not apply to a facility owner or operator (other than a manufacturer or importer of the hazardous chemical)—

(i) who has not received a material safety data sheet for such hazardous chemical from the person who supplied such hazardous chemical to such facility owner or operator; and

(ii) who has made and documented reasonable efforts to obtain such material safety data sheet by contacting such person and requesting such person to send the sheet.

(3) INITIAL SHEET AND UPDATING.—The initial material safety data sheet required under this subsection with respect to a hazardous chemical shall be provided before the later of—

(A) 12 months after the date of the enactment of this title; or

(B) 3 months after such chemical is first produced, used, or stored at a facility.

Within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical which was originally required to be disclosed on such sheet under this subsection, the sheet shall be revised.

(b) HAZARDOUS SUBSTANCE REPORTS.—

(1) BASIC REQUIREMENT.—The covered operator with respect to each covered facility at which any covered hazardous substance is present in a significant amount shall prepare and submit to the appropriate local emergency response committee a hazardous substance report.

(2) CONTENTS OF REPORT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a hazardous substance report shall contain each of the following items of information with respect to each covered hazardous substance present at the covered facility in a significant amount:

(i) The type and approximate amounts of the covered hazardous substance to be found at the facility.

(ii) A map showing the location at the facility of each such substance stored at the facility.

(iii) Potential routes of human exposure to each such substance.

(iv) Symptoms of such exposure.

(v) Appropriate emergency and first aid procedures for spills, fires, explosions, and other releases involving such substance.

(vi) Emergency telephone numbers for appropriate personnel of the covered operator of the facility.

(B) EXCEPTION WHEN MSDS UNAVAILABLE.—With respect to any covered hazardous substance for which a covered operator has not received a copy of the material safety data sheet required to be furnished under subsection (a)(2), such operator may satisfy the requirements of this subsection by including in a hazardous substance report the information required by clauses (i) and (ii) of subparagraph (A) and a statement that the covered operator has not received such sheet.

(3) INITIAL REPORT AND UPDATING.—The initial report required under this subsection with respect to a covered facility shall be provided before the later of either of the following:

(A) 18 months after the date of the enactment of this title.

(B) 6 months after a facility becomes a covered facility.

The hazardous substance report shall be revised and submitted to the appropriate local emergency response committee every six months. With respect to the requirements contained in paragraph (2)(A)(i), any revised report shall list the average amount of the substance present at the facility during the period since the last report was submitted and the maximum amount of the substance present at such facility at any time during such period.

(4) LIST OF COVERED HAZARDOUS SUBSTANCES AND THRESHOLD FOR REPORTING.—

(A) LIST OF SUBSTANCES.—Not later than 24 months after the date of the enactment of this title, the Administrator shall publish a list of those hazardous substances and hazardous chemicals which the Administrator determines have characteristics of volatility, combustibility, reac-

tivity, dispersability, or toxicity such that the release of the substance or chemical is likely to cause an imminent and substantial endangerment to the public health or the environment. The Administrator may revise such list from time to time.

(B) THRESHOLD FOR REPORTING.—At the time a substance is listed under this paragraph, the Administrator shall determine what is a significant amount of such substance for purposes of the reporting requirements of this subsection.

(C) PETITION.—Any person and any local emergency response committee may petition the Administrator to designate a substance as a covered hazardous substance. Within six months after receipt of such a petition, the Administrator shall either designate such substance as a covered hazardous substance or publish a written explanation of the reasons for the determination that such substance is not a covered hazardous substance.

(5) FORMAT OF REPORTS.—

(A) IN GENERAL.—The Administrator shall publish a uniform format for hazardous substance reports within three months after the date of the enactment of this title.

(B) USE OF MSDS FOR CERTAIN ITEMS.—A covered operator may meet the requirements of clauses (iv), (v), and (vi) of subparagraph (A) of paragraph (2) with respect to a covered hazardous substance by submitting a copy of the most recent material safety data sheet for such substance.

(6) SUPERFUND SITES.—The report required under this subsection for any covered facility referred to in section 326(1)(B) shall not be required to contain any information which is not contained in the remedial investigation and feasibility study for that facility or which is not otherwise available to the covered operator. A report for such a facility shall not be required to be revised under paragraph (3).

(7) OTA REPORT.—Within four years after the date of the enactment of this Act, the Congressional Office of Technology Assessment shall report to Congress on the need for and feasibility of requiring hazardous substance reports from owners or operators of facilities which have been issued permits under section 3005 of the Solid Waste Disposal Act.

(c) EXTREMELY TOXIC SUBSTANCE STATUS SHEETS.—

(1) REQUIREMENT.—

(A) IN GENERAL.—The covered operator of each covered facility—

(i) at which an extremely toxic substance is present during any applicable 12-month period in excess of the 12-month cumulative threshold amount, and

(ii) from which such substance is released into the environment during such period,

shall prepare an extremely toxic substance status sheet for such substance for such facility.

(B) ANNUAL APPLICATION OF REQUIREMENT.—An extremely toxic substance status sheet shall be submitted to the appropriate local emergency response committee not later than 3 months after the date the initial hazardous substance report is submitted under subsection (b)(1) with respect to a facility for which such status sheet is required. For each 12-month period ending on the same date each year thereafter for which the requirements of subparagraph (A) apply, the covered operator shall submit such a status sheet within three months.

(2) CONTENTS OF STATUS SHEET.—An extremely toxic substance status sheet shall contain each of the

following items of information with respect to the covered facility concerned:

(A) The total amount of each extremely toxic substance released into the environment during the preceding 12-calendar month period.

(B) A summary of each report submitted to the Administrator or a State during such 12-month period under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 regarding a release of a reportable quantity of an extremely toxic substance.

(C) A summary of each report submitted to the Administrator or a State during such 12-month period under the Federal Water Pollution Control Act, the Clean Air Act, or the Solid Waste Disposal Act of a discharge into the environment of any hazardous substance in excess of the amount permitted to be discharged under a permit under such Act.

(3) Use of available data.—In order to provide the information required under this subsection, the covered operator may utilize readily available data (including monitoring data) collected pursuant to other provisions of law or, where such data is not readily

available, reasonable estimates of the amounts involved. Nothing in this subsection requires the monitoring or measurement of the quantities, concentration, or frequency of any extremely toxic substance released into the environment beyond that monitoring and measurement required under other provisions of law or regulation.

(4) LIST OF EXTREMELY TOXIC SUBSTANCES AND THRESHOLD FOR REPORT.

(A) LIST OF SUBSTANCES.—Not later than 24 months after the date of the enactment of this title, the Administrator shall publish a list of substances which he deems, in his judgment and based on the best information available to him, to be extremely toxic substances. The list may be revised periodically. For purposes of this section, extremely toxic substances are those covered hazardous substances which are so acutely toxic that their release into the environment in any amount or form may present an imminent and substantial endangerment to human health and chemicals (such as vinyl chloride, benzene, asbestos, and poly chlorinated biphenyls) which are known to cause or are suspected of causing cancer, birth defects, heritable genetic mutations, or other chronic

health effects in humans. If the Administrator fails to publish such list within such 24-month period, the list shall consist of the Acute Hazards List developed by the Administrator as part of its Federal Initiative for Responding to Accidental Releases of Air Toxics (described in the July 26, 1985, notice from the Office of Solid Waste and Emergency Response of the Environmental Protection Agency) until such list is published.

(B) THRESHOLD FOR REPORTING.—At the time a substance is listed under this subsection, the Administrator shall also establish a 12-month cumulative threshold amount for such substance for purposes of the reporting requirements of this subsection.

(5) USE OF SHEET.—The sheet required under this subsection is intended to provide general information to the Federal, State, and local governments and the citizens of communities surrounding covered facilities. The sheet shall be available, consistent with section 312(a), to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering, to aid in the development of appropriate regulations, guidelines, and standards, and for other similar purposes.

(6) TELEPHONE INQUIRIES.—The Administrator shall establish a toll-free telephone number, operating 24 hours per day, that is computer accessible, to respond to inquiries concerning the information contained in extremely toxic substance status sheets.

(d) RECORDS.—Each owner or operator under subsection (a) and each covered operator under subsection (b) or (c) shall maintain records of the information filed in compliance with this section for a reasonable period to be determined by the Administrator. The Administrator shall take such steps as may be necessary to assist such covered operators and owners and operators in complying with this section and to reduce unnecessary or burdensome paperwork.

(e) EXEMPTIONS.—

(1) MATERIAL SAFETY DATA SHEETS.—The Administrator may exempt an owner or operator from the requirements of subsection (a) with respect to—

(A) any hazardous chemical or group of hazardous chemicals;

(B) any facility or group of facilities; and

(C) specific activities carried out by such owner or operator in a specific location.

(2) HAZARDOUS SUBSTANCE REPORTS.—The Administrator may exempt from the requirements of subsection (b) reporting with respect to—

(A) any covered hazardous substance or group of covered hazardous substances;

(B) any covered facility or group of covered facilities; and

(C) specific activities carried out by any covered operator in a specific location.

(3) PROCEDURES.—An exemption may be granted under this subsection by the Administrator on his own motion or upon petition of any person. An exemption may be granted only after notice and opportunity for public comment. No exemption may be granted under paragraph (1)(C) or (2)(C) for specific activities carried out by any covered operator or owner or operator until notice and an opportunity for a hearing have been provided in the locality in which such activities are carried out.

(4) STANDARD FOR EXEMPTION.—An exemption may be granted under this subsection only if the Administrator finds that the covered hazardous substance or hazardous chemical, facility, or activity concerned does not present a reasonable likelihood of injury to human health or the environment.

SEC. 312. PUBLIC AVAILABILITY OF PLANS, DATA SHEETS, REPORTS, STATUS SHEETS, AND EMERGENCY BULLETINS.

(a) AVAILABILITY TO PUBLIC.—Each emergency response plan, material safety data sheet, hazardous substance report, extremely toxic substance status sheet, and emergency bulletin shall be made available to the general public during normal working hours at the location or locations designated by the appropriate local emergency response committee. Upon request by a covered operator, the appropriate local emergency response committee shall withhold from disclosure under this section the information required by section 311(b)(2)(B) to be contained in a hazardous substance report.

(b) NOTICE OF PUBLIC AVAILABILITY.—Each local emergency response committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, hazardous substance reports, and extremely toxic substance status sheets have been submitted under this section. The notice shall state that hazardous substance emergency bulletins may subsequently be issued. Such notice shall announce that members of the public who wish to review any such plan, report, sheet, or emergency bulletin may do so at the location designated by the local emergency response committee.

SEC. 313. PROVISION OF INFORMATION TO HEALTH PROFESSIONALS, DOCTORS, AND NURSES.

(a) DIAGNOSIS OR TREATMENT BY HEALTH PROFESSIONAL.—A covered operator shall provide the specific chemical identity, if known, of a covered hazardous substance or a hazardous chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written agreement of confidentiality under subsection (d). The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that—

(1) the information is needed for purposes of diagnosis or treatment of an individual;

(2) the individual or individuals being diagnosed or treated have been exposed to the substance concerned; and

(3) knowledge of the specific chemical identity of such substance will assist in diagnosis or treatment.

Following such a written request, the covered operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a substance under section 322 when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(b) MEDICAL EMERGENCY.—A covered operator shall provide a copy of a material safety data sheet, a hazardous substance report, or an extremely toxic substance status sheet, including the specific chemical identity, if known, of a covered hazardous substance or a hazardous chemical, to any treating physician or nurse who requests such information if such physician or nurse determines that—

(1) a medical emergency exists;

(2) the specific chemical identity of the covered hazardous substance or hazardous chemical is necessary for or will assist in emergency or first-aid diagnosis or treatment; and

(3) the individual or individuals being diagnosed or treated have been exposed to the substance or chemical concerned.

Immediately following such a request, the owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a substance from a material safety data sheet, a hazardous substance report, or an extremely toxic substance status sheet under section 322 when such information is a trade secret shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a pre-

condition of such disclosure, but the facility owner or operator disclosing such information may require a written confidentiality statement in accordance with subsection (d) and a statement setting forth the items listed in paragraphs (1) through (3) as soon as circumstances permit.

(c) PREVENTIVE MEASURES BY STATE AND LOCAL HEALTH PROFESSIONALS.—

(1) PROVISION OF INFORMATION.—A covered operator shall provide the specific chemical identity, if known, of a covered hazardous substance or a hazardous chemical to any health professional (such as a physician, toxicologist, or epidemiologist)—

(A) who is a State or local government employee or a person under contract with the State or local government, and

(B) who requests such information in writing and provides a written statement of need under this subsection and a written agreement of confidentiality under subsection (d).

(2) WRITTEN STATEMENT OF NEED.—The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:

(A) To assess the hazards of the substance or chemical to which persons living in a State or local community will be exposed.

(B) To conduct or assess sampling of the atmosphere to determine exposure levels of various population groups.

(C) To conduct periodic medical surveillance of exposed population groups.

(D) To provide medical treatment to exposed individuals or population groups.

(E) To conduct studies to determine the health effects of exposure.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the State or local health professional. The authority to withhold the specific chemical identity of a substance under section 322 when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(d) CONFIDENTIALITY AGREEMENT.—Any person obtaining information under subsection (a) or (c) shall, in accordance with such subsection (a) or (c), be required to agree in a written confidentiality agreement that he will not use the information for any purpose other than the health

needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. The confidentiality agreement under this subsection may provide for appropriate legal remedies in the event of a breach of the agreement, including stipulations of a reasonable pre-estimate of likely damages. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing non-contractual remedies to the extent permitted by law.

SEC. 314. HAZARDOUS SUBSTANCE EMERGENCY NOTICE AND BULLETIN.

(a) NOTIFICATION REQUIREMENT.—

(1) IMMEDIATE NOTICE.—In addition to any other notice required by this Act, in the case of any hazardous substance emergency at any covered facility, the covered operator shall immediately notify (by telephone, by radio, or in person) the appropriate local emergency response committee and any State and local officials designated by such committee to receive such notice of the existence of the hazardous substance emergency. Such notice shall include as much of the information referred to in subsection (b) as is known to the owner or operator at the time notice under this subsection is provided so long as no delay in responding to the emergency results.

(2) EMERGENCY BULLETIN.—In the case of a hazardous substance emergency at any facility, the facility owner or operator shall provide an emergency bulletin to such committee and officials as soon as practicable.

(b) CONTENTS OF EMERGENCY BULLETIN.—Each emergency bulletin under this section shall include a full description of the hazardous substance emergency so that appropriate health and safety measures can be taken. Such notification shall include, at a minimum each of the following:

(1) The chemical name or identity of the hazardous substance or substances involved in the emergency.

(2) The actions taken to respond to the emergency.

(3) The covered operator's best estimate of the scope of the emergency, including the owner or operator's best estimate of the amount and duration of the release.

(4) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(5) Recommendations for additional actions, if any, that are necessary.

SUBTITLE C—GENERAL PROVISIONS

SEC. 321. STATE AND LOCAL LAW.

(a) IN GENERAL.—Except as provided in subsection (b), nothing in this title shall be construed to limit the ability of any State or locality to require submission of information related to hazardous chemicals or to limit the authority of any State to preempt any local law relating to the submission of information related to hazardous chemicals.

(b) EFFECT ON MSDS REQUIREMENTS.—

(1) Any State or local law enacted after August 1, 1985, which requires the submission of a material safety data sheet from facility owners or operators shall require that the data sheet be identical in content and format to the data sheet required under subsection (a) of section 311. In addition, a State or locality may require the submission of information which is supplemental to the information required on the data sheet, through additional sheets attached to the data sheet or such other means as the State or locality considers appropriate.

(2) Any State or local law—

(A) enacted after August 1, 1985, and

(B) which requires a facility owner or operator who supplies a hazardous chemical to any other facility owner or operator to furnish a mate-

rial safety data sheet to such other facility owner or operator,

shall be identical to the requirements under section 311(a)(3).

SEC. 322. TRADE SECRETS.

(a) AUTHORITY TO WITHHOLD INFORMATION.—With regard to a hazardous chemical or covered hazardous substance, any facility owner or operator required to submit or furnish any information to any other person or entity under this title may withhold from such submittal the specific chemical identity, including the chemical name and other specific identification, as defined in regulations prescribed by the Administrator of the Environmental Protection Agency under subsection (b), if the claim that the information withheld is a trade secret can be supported by showing that—

(1) the facility owner or operator has not disclosed the information to any other person, other than a member of a local emergency response committee, an officer or employee of the United States or a State or local government, an employee of such facility owner or operator, or a person who is bound by a confidentiality agreement,

(2) the information is not required to be disclosed to the public under any other Federal or State law, and

(3) knowledge of the withheld information may give the facility owner or operator an opportunity to obtain an advantage over competitors who do not know or use such information.

(b) TRADE SECRET REGULATIONS.—

(1) IN GENERAL.—The Administrator of the Environmental Protection Agency shall prescribe trade secret regulations which are identical (except for provisions relating to the procedure for the review of petitions challenging trade secret claims, and any minor conforming changes the Administrator considers appropriate), consistent with subsection (a), to the provisions concerning trade secrets in the Occupational Safety and Health Administration Hazard Communication Standard and any revisions of such trade secret provisions prescribed by the Secretary of Labor in accordance with the final ruling of the courts of the United States in United Steelworkers of America, AFL-CIO-CLC v. Thorne G. Auchter.

(2) PETITION FOR REVIEW.—The Administrator of the Environmental Protection Agency shall establish a procedure for any affected citizen to petition the Ad-

ministrator to review a trade secret claim made by a facility owner or operator under this section. Any appropriate United States district court shall have jurisdiction to review a determination by the Administrator under this section.

(3) TIMETABLE.—The Administrator shall prescribe the regulations under paragraph (1) as soon as practicable after the date of the enactment of this Act, and shall prescribe the regulations under paragraph (2) no later than 4 months after the date on which the regulations under paragraph (1) become final.

(c) EXCEPTION FOR INFORMATION PROVIDED TO HEALTH PROFESSIONALS.—Nothing in this section or regulations adopted pursuant to this section shall authorize any person to withhold information which is required to be provided to a health professional or a doctor or nurse in accordance with section 313.

SEC. 323. ENFORCEMENT.

(a) CIVIL PENALTIES.—Any person (other than a governmental entity)—

(1) who violates any requirement of section 311(b), 311(c), or 314 shall be liable to the United States for a civil penalty in an amount not to exceed $20,000 for each such violation; and

(2) who violates any requirement of section 311(a) or 313(b), and any person who fails to furnish information withheld under section 322(a) from a material safety data sheet when requested by the Administrator for purposes of carrying out a review under section 322(b), shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each such violation.

Each day such a violation continues shall, for purposes of this paragraph, constitute a separate violation.

(b) COLLECTION OF PENALTY.—Any civil penalty for which a person is liable under this title shall be collected in an action brought by the United States in the United States district court for the district in which the person from whom the penalty is sought resides or in which such person's principal place of business is located.

(c) SPECIAL ENFORCEMENT PROVISIONS FOR SECTION 313.—Whenever any facility owner or operator required to provide information under section 313(b) to a doctor or nurse who has requested such information fails or refuses to provide such information in accordance with section 313(b), such doctor or nurse may bring an action in the appropriate United States district court to require such facility owner or operator to provide the information. Such court shall have jurisdiction to issue such orders and take

such other action as may be necessary to enforce the requirements of section 313(b).

(d) STUDY OF CRIMINAL PENALTIES.—The Attorney General shall study the need for, and appropriateness of, criminal penalties for violations of this title. The Attorney General shall submit to Congress a report on the results of such study, along with recommendations, not later than four years after the date of the enactment of this Act.

SEC. 324. EXEMPTION.

This title shall not apply to the transportation, including the storage incident to such transportation, of any hazardous chemical or covered hazardous substance.

SEC. 325. EMERGENCY TRAINING AND PILOT PROGRAM.

(a) EMERGENCY TRAINING.—

(1) PROGRAMS.—Officials of the United States Government carrying out existing Federal programs for emergency training are authorized to specifically provide training and education programs for Federal, State, and local personnel in hazard mitigation, emergency preparedness, fire prevention and control, disaster response, long-term disaster recovery, national security, technological and natural hazards, and emergency processes. Such programs shall provide special emphasis for such training and education with respect to hazardous chemicals.

(2) STATE AND LOCAL PROGRAM SUPPORT.—There is authorized to be appropriated to the Federal Emergency Management Agency for each of the fiscal years 1986, 1987, 1988, 1989, and 1990, $5,000,000 for making grants to support programs of State and local governments, and to support university-sponsored programs, which are designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. Such programs shall provide special emphasis with respect to emergencies associated with hazardous chemicals. Such grants may not exceed 80 percent of the cost of any such program. The remaining 20 percent of such costs shall be funded from non-Federal sources.

(3) OTHER PROGRAMS.—Nothing in this section shall affect the availability of appropriations to the Federal Emergency Management Agency for any programs carried out by such agency other than the programs referred to in paragraph (2).

(b) PILOT PROGRAM.—

(1) AUTHORITY.—The Administrator shall carry out a pilot program for testing methods for determining total emissions from facilities of substances described in paragraph (3). In carrying out the program, the Administrator shall use quantitative measurements and

analyses to the maximum extent practicable. The Administrator shall enter into a contract with the National Academy of Sciences to develop guidelines for the conduct of the program. The contract shall require the National Academy of Sciences to report such guidelines to the Administrator and Congress within one year after the date of the enactment of this Act. Within six months after receiving the guidelines, the Administrator shall initiate the program.

(2) SELECTION OF FACILITIES.—The Administrator shall carry out the pilot program at the ten facilities owned and operated by the United States Government which, in the Administrator's discretion, are best suited for carrying out the pilot program under this subsection. The facilities selected shall be similar to facilities in the private sector so that the Administrator can determine the applicability of such methods in the private sector.

(3) DESCRIPTION OF SUBSTANCES.—The substances described in this paragraph are each of the following:

(A) Any substance designated as toxic or hazardous by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970.

(B) Any substance listed in the most recent edition of the "Annual Report on Carcinogens" published by the National Toxicology Program of the United States Public Health Service.

(C) Any substance for which a Threshold Limit Value (TLV) has been established by the American Conference of Government Industrial Hygienists.

(D) Any substance listed by the National Fire Protection Association in "Hazardous Chemicals Data" (NFPA 49).

(E) Any substance identified in "Occupational Health Guidelines for Chemical Hazards" published by the National Institute for Occupational Safety and Health.

(F) Any substance listed by the National Fire Protection Association and rated II through IV as health hazards or rated III through VI as flammability or reactivity hazards in "Fire Hazard Properties of Flammable Liquids, Gases, Volatile Solids" (NFPA 325M).

(G) Any substance designated as a carcinogen by the International Agency for Research on Cancer.

(H) Any substance listed as a carcinogen by the Carcinogen Assessment Group of the United States Environmental Protection Agency.

(I) Any pesticide the use of which is controlled under section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act.

(J) Any substance listed in a review by National Cancer Institute scientists published in the Journal of Toxicology and Environmental Health, 8:251–280, tables 3 through 6, and in subsequent published reviews by National Cancer Institute scientists of substances which meet the criteria of the National Toxicology Program for significant carcinogenic effect.

(K) Any substance defined as a "hazardous substance" under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(4) Report.—The Administrator shall submit an interim report to Congress regarding the pilot program within one year after the program is initiated. Within two years after initiating the program, the Administrator shall complete the pilot program and shall submit a final report on the results thereof to Congress. The report shall discuss the technological and economic fea-

sibility of emissions and discharge reporting, as well as the usefulness and value of the information collected. The Administrator shall make recommendations on whether a permanent emissions and discharge and inventory reporting program should be established on a continuing basis and, if so, how such a program should be structured.

(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal years beginning after September 30, 1985, such sums as may be necessary to carry out this subsection.

(c) SAVINGS PROVISION.—Nothing in this title shall affect the requirements of the Occupational Safety and Health Act of 1970.

SEC. 326. DEFINITIONS.

For purposes of this title—

(1) COVERED FACILITY.—The term "covered facility" means—

(A) a facility at which any hazardous chemical is produced, used, or stored; and

(B) a facility listed on the National Priorities List under the Comprehensive Environmental Response, Liability, and Compensation Act of 1980 for which a remedial investigation and feasibilty study has been completed.

(2) COVERED HAZARDOUS SUBSTANCE.—The term "covered hazardous substance" means a substance listed under section 311(b)(4).

(3) COVERED OPERATOR.—The term "covered operator" means any person (including any department, agency, or instrumentality of the United States) who owns or operates a covered facility.

(4) EXTREMELY TOXIC SUBSTANCE.—The term "extremely toxic substance" means a covered hazardous substance listed by the Administrator under section 311(c)(4).

(5) HAZARDOUS CHEMICAL.—The term "hazardous chemical" means any chemical for which a material safety data sheet is required to be submitted under section 1910.1200(g) of title 29 of the Code of Federal Regulations, except that such term does not include the following substances:

(A) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(B) Any manufactured item which contains a hazardous chemical present as a solid which does not result in exposure to the hazardous chemical under normal conditions of use.

(C) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(D) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(6) HAZARDOUS SUBSTANCE EMERGENCY.—The term "hazardous substance emergency" means an accidental or abnormal release of a hazardous substance (as defined in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980) from a covered facility which may present an imminent and substantial endangerment to the public health or the environment. For purposes of this paragraph—

(A) the term "abnormal release" means a release which is not a continuous release and which is in excess of the normal amounts associated with routine operations of the covered facility; and

(B) the term "accidental release" means a release which is not planned.

The term "hazardous substance emergency" also includes any release of a hazardous substance in amounts which require notification of the Environmental Protection Agency under CERCLA and which constitute a substantial threat to the public health and environment. The Administrator of the Environmental Protection Agency shall promulgate regulations to carry out the preceding sentence.

(7) MATERIAL SAFETY DATA SHEET.—The term "material safety data sheet" means the sheet required to be developed under section 1910.1200(g) of title 29 of the Code of Federal Regulations, as that section may be amended from time to time.

(8) CERCLA TERMS.—The terms used in this title which are defined for purposes of title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 shall have the meanings provided by section 101 of that Act.

TITLE IV—COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION

SEC. 400. SHORT TITLE.

This title may be cited as the "Comprehensive Oil Pollution Liability and Compensation Act".

Subtitle A—Oil Pollution Liability and Compensation

SEC. 401. DEFINITIONS.

For purposes of this subtitle, the term—

(1) "claim" means a demand in writing for a sum certain;

(2) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from that incident;

(3) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(4) "facility" means a structure, or group of structures, which is either—

(A) located, in whole or in part, on the outer Continental Shelf and used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the outer Continental Shelf, or

(B) licensed under the Deepwater Port Act of 1974;

(5) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

(6) "guarantor" means the person, other than the responsible party, who provides evidence of financial responsibility for a responsible party;

(7) "incident" means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, which causes, or poses a substantial threat, of oil pollution;

(8) "inland oil barge" means a non-self-propelled vessel, carrying oil in bulk as cargo or in residue from cargo and certificated to operate only on the internal waters of the United States while operating in such waters;

(9) "internal waters of the United States" means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside that baseline which are a part of the Gulf Intracoastal Waterway;

(10) "lessee" means a person holding a leasehold interest in an oil and gas lease on submerged lands of the outer Continental Shelf granted or maintained under the Outer Continental Shelf Lands Act;

(11) "licensee" means a person holding a license issued under the Deepwater Port Act of 1974;

(12) "mobile offshore drilling unit" means every watercraft or other contrivance (other than a public vessel of the United States) capable of use as a means of transportation on water and as a means of drilling for oil on the outer Continental Shelf;

(13) "natural resources" means living and nonliving resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(14) "navigable waters" means the waters of the United States, including the territorial sea;

(15) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(16) "oil pollution" means—

(A) the presence of oil in or on the navigable waters or on land within the United States immediately adjacent thereto, or in or on the waters of the contiguous zone—

(i) which has been discharged from a vessel or facility; and

(ii) which has been discharged in quantities which the President has determined

may be harmful pursuant to paragraph (4) of subsection (b) of section 311 of the Federal Water Pollution Control Act;

(B) the presence of oil (other than natural seepage) in or on waters outside the territorial limits of the United States and of any foreign country—

(i) which has been discharged in connection with activities conducted under the Outer Continental Shelf Lands Act;

(ii) which has been discharged from a deepwater port licensed under the Deepwater Port Act of 1974 or from a vessel transiting to or from a deepwater port and located in a safety zone of a deepwater port licensed under such Act;

(iii) causing injury to or loss of natural resources; or

(iv) which has been discharged, before being brought ashore in a port in the United States, from a ship that received such oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) for transportation to a port in the United States; and

(C) the presence of oil (other than natural seepage) in or on the waters, including the territorial sea, or adjacent shoreline, of a foreign country—

(i) which has been discharged from a vessel located within the navigable waters;

(ii) which has been discharged in connection with activities conducted under the Outer Continental Shelf Lands Act;

(iii) which has been discharged from a deepwater port licensed under the Deepwater Port Act of 1974 or a vessel transiting to or from a deepwater port and located in a safety zone of a deepwater port under such Act; or

(iv) which, in the case of the waters or adjacent shoreline of Canada, has been discharged, before being brought ashore in a port in the United States, from a ship that received such oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) for transportation to a port in the United States;

(17) "operator" means—

(A) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel; or

(B) in the case of a pipeline, any person, except the owner, who is responsible for the operation of such pipeline by agreement with the owner;

(18) "Outer Continental Shelf" has the meaning set forth in subsection (a) of section 2 of the Outer Continental Shelf Lands Act;

(19) "owner" means, in the case of a vessel or a pipeline, any person holding title to, or in the absence of title, any other indicia of ownership of, the vessel or pipeline, whether by lease, permit, contract, license, or other form of agreement, except that such term does not include a person who, without participating in the management or operation of a vessel or a pipeline, holds indicia of ownership primarily to protect his security interest in the vessel or pipeline;

(20) "permittee" means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act;

(21) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or any other commercial, legal, or governmental entity;

(22) "public vessel" means a vessel which—

(A) is owned or chartered by demise, and operated by (i) the United States, (ii) a State or political subdivision thereof, or (iii) a foreign government, and

(B) is not engaged in commercial service;

(23) "removal costs" means—

(A) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, section 5 of the Intervention on the High Seas Act, or subsection (b) of section 18 of the Deepwater Port Act of 1974, and

(B) cleanup costs, other than the costs described in subparagraph (A);

(24) "responsible party" means—

(A) with respect to a vessel or a pipeline, the owner or operator of such vessel or pipeline;

(B) with respect to a facility (other than a deepwater port or pipeline), the lessee or permittee of the area in which such facility is located, or the holder of a right of use and easement granted

under the Outer Continental Shelf Lands Act for the area in which such facility is located where such holder is a different person than the lessee or permittee; and

(C) with respect to a deepwater port, the licensee;

(25) "Secretary" means the Secretary of Transportation;

(26) "ship" means a vessel (other than an inland oil barge) carrying oil in bulk as cargo or in residue from cargo;

(27) "Trust Fund" means the Oil Spill Liability Trust Fund established by section 9507 of the Internal Revenue Code of 1954;

(28) "United States" and "State" mean the several States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States;

(29) "United States claimant" means any person residing in the United States, the Government of the United States or any agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim; and

(30) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

SEC. 402. COORDINATION WITH INTERNATIONAL CONVENTIONS.

During any period in which both the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984, are in force with respect to the United States, this subtitle shall not apply with respect to damage arising out of or directly resulting from oil pollution or a substantial threat of oil pollution to the extent that compensation is available under such conventions and subtitle D.

SEC. 403. DAMAGES AND CLAIMANTS.

(a) DAMAGES FOR WHICH CLAIMS MAY BE ASSERTED.—Claims may be asserted, to the extent provided in this section, for damages for economic loss incurred on or after the effective date of this section and arising out of or directly resulting from oil pollution or the substantial threat of oil pollution for—

(1) removal costs;

(2) injury to, or destruction of, real or personal property;

(3) reasonable costs incurred in (A) assessing both short-term and long-term injury to, or destruction of, natural resources, (B) preparing a restoration and acquisition plan with respect to the damaged resources, and (C) restoring or acquiring the equivalent of the damaged resources;

(4) loss of subsistence use of natural resources;

(5) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages are sustained during the two-year period beginning on the date the claimant first suffers such loss; and

(6) loss of tax revenue for a period of one year due to injury to real or personal property.

(b) REMOVAL COSTS RECOVERABLE BY ALL CLAIMANTS.—

(1) GENERAL RULE.—A claim may be asserted under paragraph (1) of subsection (a) by any person.

(2) LIMITATION ON RECOVERY BY RESPONSIBLE PARTY.—(A) The responsible party with respect to a vessel or facility involved in an incident may assert a claim under paragraph (1) of subsection (a) only if he can show that—

(i) he is entitled to a defense to liability under section 404(c), or

(ii) he is entitled to a limitation of liability under section 404(b).

(B) A claimant who is not entitled to a defense to liability, but who is entitled to a limitation of liability, may assert a claim under paragraph (1) of subsection (a) only to the extent that the sum of the removal costs incurred by the responsible party plus the amounts paid by the responsible party or by the guarantor on behalf of the responsible party for claims asserted under subsection (a) exceeds the amount to which the total of the liability under section 404(a) and removal costs incurred by, or on behalf of, the responsible party is limited under section 404(b).

(c) OTHER DAMAGES RECOVERABLE BY UNITED STATES CLAIMANTS.—

(1) INJURY TO PROPERTY; SUBSISTENCE USE OF NATURAL RESOURCES.—A claim may be asserted under paragraphs (2) and (4) of subsection (a) with respect to oil pollution described in subparagraph (A) or (B) of section 401(16) by any United States claimant, but only if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant.

(2) INJURY TO NATURAL RESOURCES.—A claim may be asserted under paragraph (3) of subsection (a) by the President as trustee for natural resources controlled by the United States or by the Governor of any State for natural resources within the boundary of the State and controlled by the State or a local government within the State.

(3) LOSS OF PROFITS.—A claim may be asserted under paragraph (5) of subsection (a) with respect to oil pollution described in subparagraph (A) or (B) of section 401(16) by any United States claimant, but only if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource or, if such activities are seasonal in nature, 25 percent of the claimant's earnings during the season in which such activities took place.

(4) LOSS OF TAX REVENUE.—A claim may be asserted under paragraph (6) of subsection (a) only by a State or political subdivision thereof.

(d) OTHER DAMAGES RECOVERABLE BY FOREIGN CLAIMANTS.—

(1) GENERAL RULE.—A claim may be asserted under paragraph (2), (3), (4), or (5) of subsection (a) with respect to oil pollution described in subparagraph (C) of section 401(16) by a foreign claimant who is a

resident of the country in which the oil pollution occurs, to the same extent that a United States claimant would be able to assert a claim with respect to oil pollution described in subparagraph (A) of section 401(16), if—

(A) the foreign claimant is not otherwise compensated for his loss; and

(B) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country of which the claimant is a resident, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

(2) SPECIAL RULE FOR CANADIAN CLAIMANTS RESPECTING TRANS-ALASKA PIPELINE OIL.—In the case of any oil pollution described in section 401(16)(B)(iv) or 401(16)(C)(iv), a claim may be asserted under paragraph (2), (3), (4), or (5) of subsection (a) by a resident of Canada without regard to subparagraph (B) of paragraph (1), to the same extent that a United States claimant would be able to assert a claim with respect to oil pollution described in subparagraphs (A) and (B) of section 401(16).

(e) ATTORNEY GENERAL.—A claim may be asserted under subsection (a) by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this section.

(f) GROUP OF CLAIMANTS.—If the Attorney General fails to act under subsection (e) within sixty days after the date on which the Secretary designates a source under section 406, any member of a group may assert a claim for damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any claim for damages asserted under this section.

SEC. 404. LIABILITY.

(a) JOINT, SEVERAL, AND STRICT LIABILITY.—

(1) GENERAL RULE.—Subject to paragraph (2) of this subsection and subsections (b) and (c), the responsible party with respect to a facility or a vessel (other than a public vessel) that is the source of oil pollution, or poses a substantial threat of oil pollution in circumstances that justify the incurrence of the type of costs described in section 401(23)(A), shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under section 403.

(2) SPECIAL RULE FOR MODU'S.—(A) Except as provided in subparagraph (B), in any case in which a

mobile offshore drilling unit is being used as a facility and is the source of oil pollution originating on or above the surface of the water or poses a substantial threat of such oil pollution, such unit shall be deemed to be a vessel which is a ship for purposes of this subtitle.

(B) To the extent that damages for which claims may be asserted under section 403 from any incident described in subparagraph (A) exceed the amount for which the responsible party is liable under subparagraph (A) (as such amount may be limited under subsection (b)(1)(B)), the mobile offshore drilling unit shall be deemed to be a facility covered by subsection (b)(1)(D), except that for purposes of applying subsection (b)(1)(D) the amount specified in such subsection shall be reduced by the amount for which the responsible party with respect to a ship is liable under subparagraph (A).

(C) In the case of any incident described in subparagraph (A)—

(i) which is caused primarily by willful misconduct or gross negligence within the privity or knowledge of both the owner or operator of the mobile offshore drilling unit and the lessee or permittee of the area, or holder of a right of use or

easement for the area, in which such unit is located; or

(ii) with respect to which both such owner or operator and such lessee or permittee or holder fail or refuse to report the incident where required by law or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup and removal activities;

such owner or operator and such lessee or permittee or holder shall be jointly, severally, and strictly liable (without limitation under subsection (b)) for all loss for which a claim may be asserted under section 403.

(b) LIMITS ON LIABILITY.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the total of the liability under subsection (a) and any removal costs incurred by, or on behalf of, the responsible party with respect to an incident shall be limited to—

(A) in the case of a vessel other than a ship or an inland oil barge, $500,000 or $300 per gross ton whichever is greater;

(B) in the case of a ship, $3,000,000 or $420 per gross ton, whichever is greater (but not to exceed $60,000,000);

(C) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater; or

(D) in the case of a facility, $50,000,000.

(2) EXCEPTIONS.—Paragraph (1) shall not apply—

(A) when the incident is caused primarily by willful misconduct or gross negligence within the privity or knowledge of a responsible party; or

(B) when a responsible party fails or refuses to report the incident where required by law or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup and removal activities.

(3) REPORT.—The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations on liability specified in this subsection.

(c) DEFENSES TO LIABILITY.—

(1) COMPLETE DEFENSES.—Except when the responsible party has failed or refused to report an incident where required by law, there shall be no liability under subsection (a) if the responsible party proves that the incident—

(A) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon

of an exceptional, inevitable, and irresistible character, or

(B) was wholly caused by an act or omission of a person other than—

(i) a responsible party;

(ii) an employee or agent of a responsible party; or

(iii) one whose act or omission occurs in connection with a contractual relationship with a responsible party.

(2) Partial defenses.—There shall be no liability under subsection (a)—

(A) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(B) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(d) Liability of Trust Fund.—

(1) General rule.—The Trust Fund shall be liable for damages for which claims may be asserted under section 403 and for which claims are presented under this subtitle, to the extent that the damages are not otherwise compensated.

(2) DEFENSES TO LIABILITY.—Except for the removal costs specified in section 401(23)(A), there shall be no liability under paragraph (1)—

(A) where the incident is caused wholly by an act of war, hostilities, civil war, or insurrection;

(B) as to a particular claimant, where the incident or the economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(C) as to a particular claimant, to the extent that the incident or the economic loss is caused by the negligence of that claimant.

(e) LIABILITY FOR INTEREST.—

(1) GENERAL RULE.—The responsible party or his guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of a claim under section 403 for the period described in paragraph (2).

(2) PERIOD FOR WHICH INTEREST IS OWED.—(A) Except as provided in subparagraph (B), the period for which interest shall be paid under paragraph (1) is the period beginning on the date on which the claim is presented to the responsible party or guarantor and ending on the date on which the claimant is paid, inclusive.

(B) If the responsible party or guarantor offers to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim, the period described in subparagraph (A) shall not include the period beginning on the date such offer is made and ending on the date such offer is accepted. If such offer is made within sixty days after the date upon which the claim is presented, or of the date upon which advertising is begun pursuant to section 406, whichever is later, the period described in subparagraph (A) shall not include any period before such offer is accepted.

(3) RATE OF INTEREST.—The interest paid under this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve bulletin.

(4) RELATIONSHIP TO LIABILITY LIMITS.—Interest under this subsection shall be in addition to damages for which claims may be asserted under section 403 and shall be paid without regard to any limitation of liability under subsection (b). The payment of interest under this subsection by a guarantor shall be subject to section 405(e).

(f) AGREEMENTS.—

(1) LIABILITY NOT TRANSFERABLE.—A responsible party may not transfer the liability imposed under this section to any other person.

(2) INDEMNIFICATION AGREEMENTS.—Nothing in this title shall preclude an agreement whereby a person who, by an agreement with a responsible party, agrees to indemnify the responsible party for the liability imposed under subsection (a).

(g) RELATIONSHIP TO OTHER CAUSES OF ACTION.—Nothing in this subtitle shall bar a cause of action that a responsible party subject to liability under this section or a guarantor has or would have by reason of subrogation or otherwise against any person.

(h) RELATIONSHIP TO OTHER LAW.—To the extent that it is in conflict with, or otherwise inconsistent with, any other law (other than title V or any amendment made by title V) relating to liability or the limitation thereof, this section supersedes such other law.

(i) ADMINISTRATIVE COSTS.—The Trust Fund shall not be available for the payment of costs and expenses of administration of this title, unless such costs and expenses are necessary for and incidental to the implementation of this title.

SEC. 405. FINANCIAL RESPONSIBILITY.

(a) VESSELS.—

(1) REQUIREMENT.—The responsible party with respect to each vessel (except a public vessel or a non-self-propelled vessel that does not carry oil as cargo or fuel) over three hundred gross tons that uses a facility or the navigable waters shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum liability under section 404 of this subtitle to which the responsible party would be exposed in a case where he would be entitled to limit his liability in accordance with subsection (b) of section 404. In cases where a responsible party owns or operates more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have the certification required under this subsection or the regulations issued hereunder.

(3) DENYING ENTRY TO OR DETAINING VESSELS.—The Secretary of the department in which the

Coast Guard is operating may (A) deny entry to any facility, to any port or place in the United States, or to the navigable waters, or (B) detain at the facility or at the port or place in the United States, any vessel subject to this subsection that, upon request, does not produce the certification required under this subsection or regulations issued hereunder.

(b) FACILITIES.—The responsible party with respect to each facility shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the responsibile party would be exposed in a case where he would be entitled to limit his liability in accordance with subsection (b) of section 404. In cases where the responsibile party is responsible for more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to one such facility.

(c) METHODS.—Financial responsibility under this section may be established by any one, or by any combination, of the following methods acceptable to the Secretary: evidence of insurance, surety bond, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(d) CLAIMS AGAINST GUARANTOR.—Any claim authorized by section 403(a) may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section for any responsible party with respect to a facility or vessel. In defending against such a claim, the guarantor may invoke all rights and defenses which would be available to the responsible party under this subtitle. He may also invoke the defense that the incident was caused by the willful misconduct of the responsible party, but he may not invoke any other defense that he might be entitled to invoke in proceedings brought by the responsible party against him.

(e) LIMITATION ON GUARANTOR'S LIABILITY.—Nothing in this subtitle shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceeds, in the aggregate, the amount of financial responsibility which that guarantor has provided for the responsible party for any vessel or facility that was a source of oil pollution in that incident. Nothing in this subsection shall be construed to limit any other statutory, contractual, or common law liability of a guarantor to any responsible party for whom such guarantor provides evidence of financial responsibility including, but not limited to, the liability of such guarantor for negotiating in bad faith a settlement of any claim.

SEC. 406. DESIGNATION AND ADVERTISEMENT.

(a) DESIGNATION OF SOURCE AND NOTIFICATION.—When the Secretary receives information of an incident that involves oil pollution, he shall, where possible and appropriate, designate the source or sources of the oil pollution. If a designated source is a vessel or a facility, the Secretary shall immediately notify the responsible party and the guarantor, if known, of that designation.

(b) ADVERTISEMENT BY THE RESPONSIBLE PARTY OR GUARANTOR.—If a responsible party or guarantor fails to inform the Secretary, within five days after receiving notification of a designation under subsection (a), of his denial of the designation, such party or guarantor shall advertise the designation and the procedures by which claims may be presented to such party or guarantor, in accordance with regulations promulgated by the Secretary. Advertisement under the preceding sentence shall begin no later than fifteen days after the date of the designation made under subsection (a). If advertisement is not otherwise made in accordance with this subsection, the Secretary shall promptly and at the expense of the responsible party or the guarantor involved, advertise the designation and the procedures by which claims may be presented to the responsible party or guarantor. Advertisement under this subsection shall continue for a period of no less than thirty days.

(c) ADVERTISEMENT BY THE SECRETARY.—If—

(1) the responsible party and the guarantor both deny a designation within five days after receiving notification of a designation under subsection (a),

(2) the source of the oil pollution was a public vessel, or

(3) the Secretary is unable to designate the source or sources of the oil pollution under subsection (a),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Trust Fund.

SEC. 407. CLAIMS SETTLEMENT.

(a) PRESENTATION TO RESPONSIBLE PARTY OR GUARANTOR.—Except as provided in subsection (b), all claims shall be presented to the responsible party or guarantor of the source designated under section 406(a).

(b) PRESENTATION TO TRUST FUND.—Claims may be presented to the Trust Fund—

(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 406(c);

(2) by a responsible party who may assert a claim under section 403(a); or

(3) by the Governor of a State for cleanup costs incurred by that State.

(c) ELECTION.—*If a claim is presented in accordance with subsection (a) and—*

(1) each person to whom the claim is presented denies all liability for the claim, or

(2) the claim is not settled by any person by payment within 180 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to section 406(b), whichever is later,

the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Trust Fund. Such an election shall be irrevocable and exclusive.

(d) UNCOMPENSATED DAMAGES.—*If a claim is presented in accordance with subsection (a) and full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 404 or because the responsible party and his guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Trust Fund.*

(e) TRANSMITTAL OF CLAIM AND DOCUMENTS.—*In the case of a claim which has been presented to any person under subsection (a) and which is being presented to the Trust Fund under subsection (c) or (d), that person, at the request of the claimant, shall transmit the claim and sup-*

porting documents to the Trust Fund. The Secretary may, by regulation, prescribe the documents to be so transmitted and the terms under which they are to be transmitted.

(f) PROCEDURES.—The Secretary shall establish procedures and standards for the prompt appraisal and settlement of claims against the Trust Fund, including procedures for ensuring the rapid and equitable settlement of claims submitted by the Governor of any State for cleanup costs incurred by that State.

(g) USE OF PRIVATE ORGANIZATIONS AND FEDERAL PERSONNEL.—The Secretary may use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Trust Fund and may contract for those facilities and services. To the extent necessitated by extraordinary circumstances, where the services of private organizations or State agencies are inadequate, the Secretary may use Federal personnel, on a reimbursable basis, to process claims against the Trust Fund.

(h) JUDICIAL REVIEW.—Any claimant, or any other person suffering legal wrong because of, or adversely affected or aggrieved by, a final determination of the Secretary with respect to a claim, may bring an action for judicial review of the determination in accordance with chapter 7 of title 5, United States Code. Such action shall be brought

under section 409 and shall be the exclusive judicial remedy with respect to such final determination of the Secretary. Such an action shall be filed not later than thirty days after the Secretary issues notification of the final determination. Venue for any such action shall lie in any district wherein the claimant resides, in addition to any district described in section 409(b).

(i) ACTIONS AGAINST RESPONSIBLE PARTY OR GUARANTOR.—

(1) SERVICE OF PLEADINGS ON TRUST FUND.—In any action brought under this subtitle against a responsible party or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Trust Fund at the same time those pleadings are served upon the opposing parties.

(2) INTERVENTION OF TRUST FUND.—The Trust Fund may intervene as a party as a matter of right in any action in which a complaint has been served upon it under paragraph (1).

(3) ADMISSION OF LIABILITY.—In any action to which the Trust Fund is a party, if the responsible party or his guarantor admits liability under this subtitle, the Trust Fund shall be dismissed therefrom to the extent of the admitted liability.

(4) EFFECT OF JUDGMENT.—If the Trust Fund has been served a copy of the complaint and all subsequent pleadings in an action referred to in paragraph (1), the Trust Fund shall be bound by any judgment entered therein, whether or not the Trust Fund was a party to the action.

(5) FAILURE TO SERVE PLEADINGS.—(A) If the plaintiff fails to serve a copy of the complaint upon the Trust Fund as required by paragraph (1), the plaintiff shall not recover from the Trust Fund any sums not paid by the defendant.

(B) If the defendant fails to serve a copy of the initial answer to a complaint upon the Trust Fund as required by paragraph (1), the limitation of liability otherwise permitted by subsection (b) of section 404 shall not be available to the defendant.

(C) If neither the plaintiff nor the defendant serves a copy of the complaint and all subsequent pleadings upon the Trust Fund as required in paragraph (1), the Trust Fund may serve a motion for a new trial for the purposes specified in this subparagraph. The motion must be served not later than ten days after the Trust Fund has received notice of the entry of the judgment in the action, but in no case later than ninety days after the entry of that judgment.

The Trust Fund must establish in its motion that, due to the failure of the plaintiff or defendant to comply with paragraph (1), the Trust Fund failed to receive timely notice of one or more issues raised in the action, which might affect the liability of the Trust Fund in any case brought under this subtitle. When the Trust Fund does so, the court shall open the judgment, if one has been entered, and shall take additional pleadings and testimony on the identified issue or issues. The court may amend findings of fact and conclusions of law or make new findings and conclusions and direct the entry of a new judgment in the action.

(j) JOINDER OF PARTIES.—In any action brought against the Trust Fund the plaintiff may join any responsible party or his guarantor, and the Trust Fund may implead any person, who is or may be liable to the Trust Fund.

(k) PERIOD OF LIMITATIONS.—No claim may be presented, nor may any action be commenced for damages recoverable under this subtitle, unless that claim is presented to, or that action is commenced against, a responsible party or his guarantor or against the Trust Fund as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under subsection (a) of section 403, or within six years

of the date of the incident which resulted in that loss, whichever is earlier.

SEC. 408. SUBROGATION.

(a) RIGHT OF SUBROGATION.—Any person, including the Trust Fund, who compensates any claimant for an economic loss compensable under section 403 shall be subrogated to all rights, claims, and causes of action which that claimant has under this subtitle.

(b) RECOVERY BY TRUST FUND.—

(1) DENIAL OF SOURCE DESIGNATION OR LIABILITY.—In a case in which the Trust Fund has compensated a claimant for a claim presented to the Trust Fund under section 407(b)(1) or 407(c)(1), the Trust Fund shall recover under subsection (a)—

(A) the amount the Trust Fund has paid to the claimant;

(B) interest on that amount for the period beginning on the date on which the claim was first presented by the claimant to the Trust Fund or the responsible party or guarantor and ending on the date on which the Trust Fund is paid by the responsible party or guarantor, except that if the Trust Fund offered to the claimant the amount finally paid by the Trust Fund to the claimant in satisfaction of the claim against the Trust Fund

the responsible party or guarantor shall not be liable for interest for the period beginning on the date the Trust Fund made such offer and ending on the date on which the claimant accepted such offer; and

(C) all costs incurred by the Trust Fund by reason of the claim of the claimant against the Trust Fund and by reason of the claim of the Trust Fund against the responsible party or guarantor.

(2) FAILURE TO SETTLE WHERE PAYMENT BY TRUST FUND EXCEED OFFER BY RESPONSIBLE PARTY.—In a case in which the Trust Fund has compensated a claimant for a claim presented to the Trust Fund under section 407(c)(2) where the amount the Trust Fund has paid to the claimant exceeds the largest amount, if any, the responsible party or guarantor offered to the claimant in satisfaction of the claim of the claimant against the responsible party or guarantor, the Trust Fund shall recover under subsection (a)—

(A) the amount the Trust Fund has paid the claimant, except that the portion of such amount in excess of the amount offered to the claimant by

the responsible party or guarantor shall be subject to dispute by the responsible party or guarantor;

(B) interest on the portion of such excess, if any, which is recovered by the Trust Fund, for a period determined in the same manner as in paragraph (1)(B); and

(C) all costs incurred by the Trust Fund by reason of the claim of the Trust Fund against the responsible party or guarantor.

(3) FAILURE TO SETTLE WHERE PAYMENT OF TRUST FUND DOES NOT EXCEED OFFER BY RESPONSIBLE PARTY.—In a case in which the Trust Fund has compensated a claimant for a claim presented to the Trust Fund under section 407(c)(2) where the amount the Trust Fund has paid to the claimant is less than or equal to the largest amount the responsible party or guarantor offered to the claimant in satisfaction of the claim of the claimant against the responsible party or guarantor, the Trust Fund shall recover under subsection (a)—

(A) the amount the Trust Fund has paid to the claimant; and

(B) interest—

(i) for the period beginning on the date on which the claim was presented by the

claimant to the responsible party or guarantor and ending on the date on which the responsible party or guarantor offered to the claimant the largest amount referred to in this paragraph, except that if the responsible party or guarantor offered such amount within sixty days after the date upon which the claim of the claimant was presented to the responsible party or guarantor or advertising was commenced under section 406, whichever is later, the responsible party or guarantor shall not be liable for interest for such period; and

(ii) for the period beginning on the date on which the claim of the Trust Fund against the responsible party or guarantor was presented to the responsible party or guarantor to the date on which the Trust Fund is paid, inclusive, except that if the responsible party or guarantor offers to the Trust Fund the amount finally paid to the Trust Fund in satisfaction of the claim of the Trust Fund, interest shall not be paid for the period beginning on the date on which such offer is made and ending on the date on

which the Trust Fund accepts that offer, inclusive.

(4) SPECIAL RULES.—For purposes of this subsection—

(A) interest shall be calculated in accordance with section 404(e); and

(B) costs recoverable under paragraphs (1)(C) and (2)(C) include, but are not limited to, processing costs, investigating costs, court costs, and attorney's fees.

(c) PAYMENT OF CERTAIN INTEREST TO CLAIMANT.—The Trust Fund shall pay over to the claimant that portion of any interest the Trust Fund recovers under subsections (b)(1)(B) and (b)(2)(B) for the period beginning on the date on which the claim of the claimant was first presented to the Trust Fund or the responsible party or guarantor to the date upon which the claimant was paid by the Trust Fund, inclusive.

(d) APPLICATION OF LIABILITY LIMITS.—The Trust Fund is entitled to recover for all interest and costs specified in subsection (b) without regard to any limitation of liability to which the responsible party or guarantor may otherwise be entitled. The payment of such interest and costs by a guarantor shall be subject to section 405(e).

SEC. 409. JURISDICTION AND VENUE.

(a) JURISDICTION.—The United States district courts shall have exclusive original jurisdiction over all controversies arising under this subtitle and subtitles B and C, without regard to the citizenship of the parties or the amount in controversy.

(b) VENUE.—Unless otherwise provided in this title, venue shall lie in any district wherein the injury complained of occurred, or wherein the responsible party or guarantor resides, may be found, or has his principal office. For purposes of this section, the Trust Fund resides in the District of Columbia.

SEC. 410. RELATIONSHIP TO OTHER LAW.

(a) PREEMPTION.—Except as provided in this title, or in section 9507 of the Internal Revenue Code of 1954—

(1) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for an economic loss compensable under this subtitle,

(2) no person may be required to contribute to any fund, the purpose of which is to compensate for damages for an economic loss described in section 403(a), except that, for a period of three years beginning on the effective date of this section, any State which on such date has in effect a statute that requires such contributions may continue to require such contri-

butions within the limits established by such statute as those limits exist on such date, and

(3) no person may be required to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim compensable under this subtitle.

(b) STATE FINANCING OF PREPARATION FOR OIL POLLUTION CLEANUP.—Nothing in this title shall preclude any State from imposing a tax or fee upon any person or upon oil in order to finance the purchase and prepositioning of oil pollution cleanup and removal equipment or to finance other preparations for responding to a discharge of oil which affects such State.

(c) ACTIONS BY TRUST FUND.—Nothing in subsection (a) shall prohibit an action by the Trust Fund under any other provision of law to recover compensation paid under this subtitle.

SEC. 411. PENALTIES.

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 405 or the regulations issued thereunder or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining *the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. The Secretary may compromise, modify, or remit with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.*

SEC. 412. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years beginning on or after October 1, 1985, such sums as may be necessary to carry out this title.

Subtitle B—Report and Coordination With Other Provisions

SEC. 421. ANNUAL REPORT.

The Secretary shall report annually to the Congress on the activities of the Trust Fund during the preceding year. The Secretary shall include in any such report any recommendations for legislative changes needed for the Trust Fund to carry out the purposes of this title.

SEC. 422. COORDINATION WITH OTHER PROVISIONS OF THIS ACT.

(a) If any provision of this title provides that the balance in any fund (hereinafter in this subsection referred to as the "transferor fund") is to be transferred to the Trust Fund, any claim which arises before the effective date of such transfer (to the extent such claim would have been payable out of the transferor fund), shall be payable out of the Trust Fund.

(b) If any provision of this title authorizes amounts to be expended from the Trust Fund which are not authorized by title V (or an amendment made by title V), such provision shall have no force or effect.

Subtitle C—Regulations, Effective Dates, and Savings Provisions

SEC. 441. EFFECTIVE DATES.

(a) PROVISIONS TAKING EFFECT ON DATE OF ENACTMENT.—This section, section 401, section 402, section 412, subtitle B, section 442(a) (1) and (3), section 443, 444, and each provision of subtitle A that authorizes the promulgation of regulations shall be effective on the date of the enactment of this title.

(b) SUBTITLE D.—Subtitle D shall take effect on the first date on which both the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International

Fund for Compensation for Oil Pollution Damage are in force with respect to the United States.

(c) Provisions Taking Effect in 180 Days.—All other provisions of this title, and the regulations issued under this title, shall take effect 180 days after the date of enactment of this title, except that the penalty prescribed by section 411 for failure to comply with the requirements of section 405 or the regulations issued thereunder shall not be effective until the ninetieth day after issuance of those regulations or the two hundred and seventieth day after the date of enactment of this title, whichever is earlier.

(d) Regulations Respecting Financial Responsibility.—Any regulation respecting financial responsibility, issued pursuant to any provision of law repealed by section 442, and in effect on the day immediately preceding the effective date of section 442 shall remain in force until superseded by regulations issued under subtitle A.

SEC. 442. CONFORMING AMENDMENTS.

(a) Trans-Alaska Pipeline Authorization Act.—(1) The first sentence of subsection (b) of section 204 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(b); 87 Stat. 586) is amended by inserting "in the State of Alaska" after "any area" and by inserting "related to the trans-Alaska oil pipeline" after "any activities".

Such subsection is further amended by inserting at the end thereof the following new sentence: "This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 401 of the Comprehensive Oil Pollution Liability and Compensation Act.".

(2) Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) is repealed. Such repeal shall not affect the applicability of such subsection to claims arising before the effective date of this paragraph. Notwithstanding section 441, the repeal of—

(A) paragraph (4) of such subsection (establishing the Trans-Alaska Pipeline Liability Fund),

(B) paragraph (5) of such subsection (to the extent it permits costs of administration to be paid from the Fund and permits amounts in the Fund to be invested), and

(C) paragraph (8) of such subsection (permitting recovery by subrogation),

shall only become effective upon the payment by the Board of Trustees of the Trans-Alaska Pipeline Liability Fund of all claims certified under paragraph (3) of this subsection, the rebate of all remaining amounts under paragraph (3) of this subsection, and the completion of all actions required to carry out paragraph (3) of this subsection.

(3)(A) Not later than 210 days after the date of enactment of this paragraph, the Board of Trustees of the Trans-Alaska Pipeline Liability Fund shall certify to the Secretary of Transportation the total amount of claims outstanding against such Fund, as of the effective date of paragraph (2) of this subsection. The amount in the Trans-Alaska Pipeline Liability Fund exceeding the total amount certified under the preceding sentence shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it ws loaded on the vessel.

(B) After the settlement of all claims described in subparagraph (A) and the completion of all actions, if any, by the Trans-Alaska Pipeline Liability Fund for recovery of amounts paid on such claims, the remaining amounts in such Fund shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(C) Whenever a rebate is made on a pro rata basis to the owners of oil under subparagraph (A) or (B), each such owner's share of the rebate shall be an amount determined by dividing the amount contributed by such owner to the Trans-Alaska Pipeline Liability Fund by the total amount contributed by all such owners to such Fund.

(D) Trustees and former trustees of the Trans-Alaska Pipeline Liability Fund who were designated by the Secretary of the Interior shall not be subject to any liability in-

curred by that Fund or by the present and past officers and trustees of that Fund, other than liability for gross negligence or willful misconduct.

(b) INTERVENTION ON THE HIGH SEAS ACT.—Section 17 of the Intervention on the High Seas Act (33 U.S.C. 1486; 88 Stat. 10) is amended to read as follows:

"SEC. 17. The Oil Spill Liability Trust Fund established under section 9507 of the Internal Revenue Code of 1954 shall be available to the Secretary for actions and activities relating to oil pollution (as defined in section 401 of that Act), or the substantial threat of oil pollution, taken under section 5 of this Act.".

(c) FEDERAL WATER POLLUTION CONTROL ACT.—Section 311 of the Federal Water Pollution Control Act is amended as follows:

(1) Subsection (a) is amended by striking out the period at the end of paragraph (17) and inserting in lieu thereof a semicolon and by adding at the end the following new paragraph:

"(18) 'person in charge' means the individual immediately responsible for the operation of a vessel or facility.".

(2) Paragraph (5) of subsection (b) is amended in the last sentence by inserting after "person" the following: "or his employer".

(3) Subparagraph (A) of paragraph (6) of subsection (b) is amended—

(A) in the first and second sentences, by striking out "or person in charge" each place it appears and inserting in lieu thereof "person in charge, or employer of such person in charge"; and

(B) in the third sentence, by striking out "the owner or operator" and inserting in lieu thereof "whoever being".

(4) Subparagraph (B) of paragraph (6) of subsection (b) is amended in the first and second sentences by striking out "or person in charge" each place it appears and inserting in lieu thereof "person in charge, or employer of such person in charge".

(5) Subsection (c)(2)(H) is amended by striking out "from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal" and inserting in lieu thereof the following: ", in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred in such removal from the Oil Spill Liability Trust Fund".

(6) Subsection (d) is amended by striking out the last sentence.

(7) Subsections (f), (g), and (i) of section 311 of the Federal Water Pollution Control Act shall not apply with respect to any discharge of oil resulting in damages for which a claim may be asserted under subtitle A of this title.

(8) Subsection (i) is amended by striking out "(1)" after "(i)" and by striking out paragraphs (2) and (3).

(9)(A) Subsection (k) is repealed, effective upon the payment from the fund established by such subsection of all claims certified under subparagraph (B) and all remaining amounts to the general fund of the Treasury under subparagraph (B).

(B) Not later than 180 days after the effective date of this paragraph, the Secretary of Transportation shall certify to the Secretary of the Treasury the total amount of the claims outstanding against the fund established by subsection (k) as of the effective date of this paragraph. The amount in such fund exceeding the total amount certified shall be transferred to the general fund of the Treasury. If the amount paid in settlement of such claims is less than the amount so certified, the remainder shall be transferred to the general fund of the Treasury. Any amounts received by the United States under section 311 with respect to such

claims after the effective date of the repeal of subsection (k) shall be deposited in the general fund of the Treasury.

(10) Subsection (l) is amended by striking out the second sentence.

(11) Subsection (p) is repealed.

(12) Section 311 is amended by adding at the end thereof the following new subsection:

"(s) The Oil Spill Liability Trust Fund shall be available to carry out subsections (c), (d), (i), and (l) as those subsections relate to discharges of oil. Any amounts received by the United States under this section with respect to claims arising on or after the effective date of this subsection shall be deposited in the Oil Spill Liability Trust Fund.".

(d) DEEPWATER PORT ACT OF 1974.—The Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.; 88 Stat. 2126) is amended as follows:

(1) Section 4(c)(1) is amended by striking out "section 18(l) of this Act" and inserting in lieu thereof "section 405 of the Comprehensive Oil Pollution Liability and Compensation Act".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), and (n) of section 18 are repealed and subsections

(c), (k), and (m) of section 18 are redesignated as subsections (b), (c), and (d), respectively.

(3) Paragraph (3) of subsection (b) of section 18 (as redesignated by paragraph (2)) is amended by striking out "Deepwater Port Liability Fund established pursuant to subsection (f) of this section." and inserting in lieu thereof "Oil Spill Liability Trust Fund.".

(4) Subsection (c) of section 18 (as redesignated by paragraph (2)) is amended to read as follows:

"(c) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.".

(5) Any amounts remaining in the Deepwater Port Liability Fund established by section 18(f) of the Deepwater Port Act of 1974 shall be deposited in the Oil Spill Liability Trust Fund. The Oil Spill Liability Trust Fund shall assume all liability incurred by the Deepwater Port Liability Fund under the Deepwater Port Act of 1974.

(e) OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978.—Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95–

372) is repealed. Any amounts remaining in the Offshore Oil Pollution Compensation Fund established under section 302 of that title shall be deposited in the Oil Spill Liability Trust Fund established by subtitle B of this title. The Oil Spill Liability Trust Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund under title III of the Outer Continental Shelf Lands Act Amendments of 1978.

SEC. 443. REGULATIONS AND DELEGATION OF AUTHORITY.

The Secretary of Transportation may prescribe regulations to carry out this title.

SEC. 444. SEPARABILITY.

If any provision of this title or the applicability thereof is held invalid, the remainder of this title shall not be affected thereby.

Subtitle D—Implementation of Conventions

SEC. 461. RECOGNITION OF THE INTERNATIONAL FUND.

The International Oil Pollution Compensation Fund established by article 2 of the International Fund Convention is recognized under the laws of the United States as a legal person and shall have the capacity under the laws of the United States to contract, to acquire and dispose of real and personal property, and to institute and be a party to legal proceedings. The Director of the International Fund is *recognized as the legal representative of the International Fund. The Director shall be deemed to have appointed irrevocably the Secretary of State his agent for service of process in any action against the International Fund in any court in the United States.*

SEC. 462. SERVICE OF PROCESS AND INTERVENTION.

(a) SERVICE OF PROCESS ON FUNDS.—In any action brought in a court in the United States against the owner of a ship or his guarantor under the Civil Liability Convention, the plaintiff or defendant, as the case may be, shall serve a copy of the complaint and any subsequent pleading therein upon the International Fund and the Oil Spill Liability Trust Fund at the same time the complaint or other pleading is served upon the opposing parties.

(b) INTERVENTION.—The International Fund may intervene as a party as a matter of right in any action brought in a court in the United States against the owner of a ship or his guarantor under the Civil Liability Convention.

(c) EFFECT OF JUDGMENT.—If the International Fund has been served a copy of the complaint and all subsequent pleadings in an action referred to in subsection (a), the International Fund shall be bound by any judgment entered therein, whether or not the International Fund was a party to the action.

SEC. 463. EXEMPTION FROM TAXATION.

The International Fund and its assets shall be exempt from all direct taxation in the United States.

SEC. 464. PAYMENT OF CONTRIBUTIONS.

(a) PAYMENTS TO BE MADE FROM OIL SPILL LIABILITY TRUST FUND.—The amount of any contribution to the International Fund which is required to be made under article 10 of the International Fund Convention by any person with respect to oil received in any port, terminal installation, or other installation located in the United States shall be paid to the International Fund from the Oil Spill Trust Fund. Before the International Fund Convention enters into force with respect to the United States, the President shall make, and deposit with the Secretary-General of the International Maritime Organization, a declaration under article 14 of the International Fund Convention that the United States assumes the obligation to pay contributions under article 10 of such Convention in respect of oil received within the territory of the United States and that such amount will be paid from the Oil Spill Liability Trust Fund.

(b) INFORMATION.—The Secretary shall, by regulation, require persons who are required to make contributions with respect to oil received in any port, terminal installation, or other installation in the United States under article 10 of the International Fund Convention to provide such

information relating to that oil as may be necessary to carry out subsection (a).

SEC. 465. JURISDICTION OF DISTRICT COURTS.

(a) JURISDICTION.—The United States district courts shall have exclusive original jurisdiction of all controversies arising under the Civil Liability Convention or the International Fund Convention in—

(1) the territory, including the territorial sea, of the United States, or

(2) the exclusive economic zone of the United States established by Proclamation Numbered 5030, dated March 10, 1983,

without regard to the citizenship of the parties or the amount in controversy.

(b) VENUE.—Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For purposes of this subsection, the International Fund shall reside in the District of Columbia.

SEC. 466. RECOGNITION OF JUDGMENTS.

Any final judgment of a court of any nation which is a party to the Civil Liability Convention or the International Fund Convention in an action for compensation under either such convention shall be recognized by any court of the United States or of a State when that judgment *has become enforceable in such nation and is no longer subject to ordinary forms of review, except where—*

(1) the judgment was obtained by fraud; or

(2) the defendant was not given reasonable notice and a fair opportunity to present his case.

SEC. 467. FINANCIAL RESPONSIBILITY.

(a) U.S. DOCUMENTED SHIPS.—The owner of each ship which is documented under the laws of the United States and is carrying more than two thousand tons of oil in bulk as cargo shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility in amounts sufficient to cover the maximum liability of such owner for pollution damage arising from one incident under the Civil Liability Convention. The Secretary shall issue a certificate to each such owner who complies with this paragraph, in the form and manner required by the Civil Liability Convention.

(b) U.S. OWNED SHIPS.—With respect to any ship owned by the United States, the Secretary shall issue a certificate stating that the ship is owned by the United States and that the ship's liability is covered within the limits of liability prescribed by the Civil Liability Convention.

(c) OTHER SHIPS.—The owner of each ship (other than a ship to which subsection (a) or (b) applies), wherever registered, which is carrying more than two thousand tons

of oil in bulk as cargo and which enters or leaves a port or offshore terminal in the United States (including the territorial seas) shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility in amounts sufficient to cover the maximum liability of such owner for pollution damage arising from one incident under the Civil Liability Convention. The owner of a ship which is registered in, or flying the flag of, a nation which is a party to the Civil Liability Convention shall be considered to have met the requirements of this paragraph if the ship is carrying a certificate issued by such nation attesting that insurance or other financial security is in force which meets the requirements of such Convention.

(d) Withholding Clearance.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any ship which does not have a certificate showing compliance with the requirements of financial responsibility under subsection (a) or (c).

(e) Denying Entry and Detaining Vessels.—The Secretary of the department in which the Coast Guard is operating may (1) deny entry to any facility, to any port or place in the United States, or to the navigable waters, or (2) detain at the facility or at the port or place in the

United States, any vessel subject to this section that, upon request, does not produce the certificate required under this section or regulations issued hereunder.

SEC. 468. CIVIL PENALTY.

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 464(b) or 467, the regulations issued under either such section, or any denial or detention order under section 467(e) shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. The Secretary may compromise, modify, or remit with or without conditions any civil penalty which is subject to imposition or which has been imposed under this subsection. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

SEC. 469. WAIVER OF SOVEREIGN IMMUNITY.

The United States waives all defenses based on its status as a sovereign State with respect to any controversy arising under the Civil Liability Convention or the International Fund Convention relating to any ship owned by the United States and used for commercial purposes.

SEC. 470. RULES AND REGULATIONS.

The Secretary may issue such rules and regulations as are necessary to implement the Civil Liability Convention and the International Fund Convention.

SEC. 471. DEFINITIONS.

For purposes of this subtitle—

(1) terms defined in subtitle A have the same meanings when used in this subtitle;

(2) the term "Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1984;

(3) the term "International Fund" means the International Oil Pollution Compensation Fund established by article 2 of the International Fund Convention; and

(4) the term "International Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

TITLE V—AMENDMENTS OF THE INTERNAL REVENUE CODE OF 1954

SEC. 501. SHORT TITLE.

This title may be cited as the "Superfund Revenue Act of 1985".

Part I—Superfund and Its Revenue Sources

SEC. 511. EXTENSION OF ENVIRONMENTAL TAXES.

(a) IN GENERAL.—Subsection (d) of section 4611 of the Internal Revenue Code of 1954 (relating to termination) is amended to read as follows:

"(d) APPLICATION OF TAXES.—The taxes imposed by this section shall apply after October 31, 1985, and before October 1, 1990."

(b) TECHNICAL AMENDMENT.—Section 303 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on November 1, 1985.

SEC. 512. INCREASE IN TAX ON PETROLEUM.

(a) INCREASE IN TAX.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum) are each amended by striking out "0.79 cent" and inserting in lieu thereof "11.9 cents".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on November 1, 1985.

SEC. 513. INCREASE IN TAX ON CERTAIN CHEMICALS.

(a) INCREASE IN RATE OF TAX; LEAD ADDED AS TAXABLE CHEMICAL.—Subsection (b) of section 4661 of the Internal Revenue Code of 1954 (relating to amount of tax imposed on certain chemicals) is amended by striking out the table contained in such subsection and inserting in lieu thereof the following:

“In the case of:	*The tax (before any inflation adjustment) is the following amount per ton:*
Organic substances	
Acetylene	*$6.25*
Benzene	*6.25*
Butadiene	*6.25*
Butane	*5.54*
Butylene	*6.25*
Ethylene	*6.25*
Methane	*3.44*
Naphthalene	*6.25*
Propylene	*6.25*
Toluene	*6.25*
Xylene	*11.19*
Inorganic substances	
Ammonia	*4.20*
Antimony	*6.25*
Antimony trioxide	*6.25*
Arsenic	*6.25*
Arsenic trioxide	*6.25*
Barium sulfide	*6.25*
Bromine	*6.25*
Cadmium	*6.25*
Chlorine	*4.03*
Chromite	*1.52*
Chromium	*6.25*
Cobalt	*6.25*
Cupric oxide	*6.25*
Cupric sulfate	*6.25*
Cuprous oxide	*6.25*
Hydrochloric acid	*1.24*
Hydrogen fluoride	*6.25*
Lead	*6.25*

Lead Oxide	*6.25*
Mercury	*6.25*
Nickel	*6.25*
Nitric acid	*3.90*
Phosphorus	*6.25*
Potassium dichromate	*6.25*
Potassium hydroxide	*6.25*
Sodium dichromate	*6.25*
Sodium hydroxide	*3.72*
Stannic chloride	*6.25*
Stannous chloride	*6.25*
Sulfuric acid	*1.03*
Zinc chloride	*6.25*
Zinc sulfate	*6.25."*

(b) Inflation Adjustments in Amount of Tax.—Section 4661 of such Code is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) Inflation Adjustments in Amount of Tax.—

"(1) In general.—In the case of any taxable chemical sold in a calendar year after 1986, the amount of the tax imposed by subsection (a) shall be the amount determined under subsection (b) increased by the applicable inflation adjustment for such calendar year.

"(2) Applicable inflation adjustment.—

"(A) In general.—In the case of a taxable chemical, the applicable inflation adjustment for the calendar year is the percentage (if any) by which—

"(i) the applicable price index for the preceding calendar year, exceeds

"(ii) the applicable price index for 1985.

"(B) APPLICABLE PRICE INDEX.—For purposes of subparagraph (A), the applicable price index for any calendar year is the average for the months in the 12-month period ending on September 30 of such calendar year of—

"(i) in the case of organic substances, the producer price index for basic organic chemicals as published by the Secretary of Labor, or

"(ii) in the case of inorganic substances, the producer price index for basic inorganic chemicals as published by the Secretary of Labor.

"(3) ROUNDING.—If any increase determined under paragraph (1) is not a multiple of 1 cent, such increase shall be rounded to the nearest multiple of 1 cent (or, if the increase determined under paragraph (1) is a multiple of ½ of 1 cent, such increase shall be increased to the next higher multiple of 1 cent)."

(c) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

(1) Section 4662 of such Code (relating to definitions and special rules) is amended by redesignating

subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

"(1) TAX-FREE SALES.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661 on the sale by the manufacturer or producer of any taxable chemical for export, or for resale by the purchaser to a second purchaser for export.

"(B) PROOF OF EXPORT REQUIRED.—Rules similar to the rules of section 4221(b) shall apply for purposes of subparagraph (A).

"(2) CREDIT OR REFUND WHERE TAX PAID.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if—

"(i) tax under section 4661 was paid with respect to any taxable chemical, and

"(ii) such chemical was exported by any person,

credit or refund (without interest) of such tax shall be allowed or made to the person who paid such tax.

"(B) CONDITION TO ALLOWANCE.—No credit or refund shall be allowed or made under

subparagraph (A) unless the person who paid the tax establishes that he—

"(i) has repaid or agreed to repay the amount of the tax to the person who exported the taxable chemical, or

"(ii) has obtained the written consent of such exporter to the allowance of the credit or the making of the refund.

"(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection."

(2) Paragraph (1) of section 4662(d) of such Code (relating to refund or credit for certain uses) is amended—

(A) by striking out "the sale of which by such person would be taxable under such section" and inserting in lieu thereof "which is a taxable chemical", and

(B) by striking out "imposed by such section on the other substance manufactured or produced" and inserting in lieu thereof "imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (b) or (e) of this section)".

(d) SPECIAL RULES FOR CERTAIN CHEMICALS.—

(1) REPEAL OF EXEMPTION FOR CHEMICALS DERIVED FROM COAL.—

(A) Section 4662(b) of such Code (relating to exemptions; other special rules) is amended by striking out paragraph (4) and by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(B) Paragraph (3) of section 4662(d) of such Code is amended by striking out "subsection (b)(5)" each place it appears and inserting in lieu thereof "subsection (b)(4)".

(2) EXEMPTION FOR LEAD HAVING TRANSITORY PRESENCE DURING EXTRACTING PROCESS.—Clause (i) of section 4662(b)(5)(B) of such Code (relating to substance having transitory presence during extracting process), as redesignated by paragraph (1), is amended by inserting "lead," before "lead oxide".

(3) SPECIAL RULE FOR XYLENE.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (5) the following new paragraph:

"(6) SPECIAL RULE FOR XYLENE.—Except in the case of any substance imported into the United States or exported from the United States, the term

'xylene' does not include any separated isomer of xylene."

(4) SPECIAL RULE FOR NITRIC ACID USED IN PRODUCTION OF NITROCELLULOSE.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (6) the following new paragraph:

"(7) SPECIAL RULE FOR NITRIC ACID USED IN PRODUCTION OF NITROCELLULOSE.—The tax imposed under section 4661 on nitric acid used by the producer of such acid in the production of nitrocellulose shall not exceed $0.24 per ton."

(e) EXEMPTION FOR CERTAIN RECYCLED CHEMICALS.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (7) the following new paragraph:

"(8) RECYCLED CHROMIUM, COBALT, NICKEL, AND LEAD.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any chromium, cobalt, nickel, or lead which is diverted or recovered in the United States from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process).

"(B) EXEMPTION NOT TO APPLY WHILE CORRECTIVE ACTION UNCOMPLETED.—Subparagraph (A) shall not apply during any period that required corrective action by the taxpayer is uncompleted.

"(C) REQUIRED CORRECTIVE ACTION.—For purposes of subparagraph (B), required corrective action shall be treated as uncompleted during the period—

"(i) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to—

"(I) a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, or

"(II) a final order under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

"(ii) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

"(D) SOLID WASTE.—For purposes of this paragraph, the term 'solid waste' has the meaning given such term by section 1004 of the Solid Waste Disposal Act, except that such term shall not include any byproduct, coproduct, or other waste from any process of smelting, refining, or otherwise extracting any metal."

(f) EXEMPTION FOR ANIMAL FEED SUBSTANCES.—

(1) IN GENERAL.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (8) the following new paragraph:

"(9) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—

"(A) IN GENERAL.—In the case of—

"(i) nitric acid,

"(ii) sulfuric acid,

"(iii) ammonia, or

"(iv) methane used to produce ammonia,

which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term

'qualified animal feed substance' means any substance—

"(i) used in a qualified animal feed use by the manufacturer, producer, or importer,

"(ii) sold for use by any purchaser in a qualified animal feed use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

"(C) QUALIFIED ANIMAL FEED USE.—The term 'qualified animal feed use' means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

"(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical."

(2) REFUND OR CREDIT FOR SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—Subsection (d) of section 4662 of such Code (relating to refunds

and credits with respect to the tax on certain chemicals) is amended by adding at the end thereof the following new paragraph:

"(4) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(9), and

"(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(9) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section."

(g) CERTAIN EXCHANGES BY TAXPAYERS NOT TREATED AS SALES.—Subsection (c) of section 4662 of such Code (relating to use by manufacturers) is amended to read as follows:

"(c) USE AND CERTAIN EXCHANGES BY MANUFACTURER, ETC.—

"(1) USE TREATED AS SALE.—Except as provided in subsections (b) and (e), if any person manufac-

tures, produces, or imports any taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

"(2) SPECIAL RULES FOR INVENTORY EXCHANGES.—

"(A) IN GENERAL.—Except as provided in this paragraph, in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of an inventory exchange with another person—

"(i) such exchange shall not be treated as a sale, and

"(ii) such other person shall, for purposes of section 4661, be treated as the manufacturer, producer, or importer of such chemical.

"(B) REGISTRATION REQUIREMENT.—Subparagraph (A) shall not apply to any inventory exchange unless—

"(i) both parties are registered with the Secretary as manufacturers, producers, or importers of taxable chemicals, and

"(ii) the person receiving the taxable chemical has, at such time as the Secretary

may prescribe, notified the manufacturer, producer, or importer of such person's registration number and the internal revenue district in which such person is registered.

"(C) INVENTORY EXCHANGE.—For purposes of this paragraph, the term 'inventory exchange' means any exchange in which 2 persons exchange property which is, in the hands of each person, property described in section 1221(1)."

(h) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsecton, the amendments made by this section shall take effect on November 1, 1985.

(2) REPEAL OF TAX ON XYLENE FOR PERIODS BEFORE OCTOBER 1, 1985.—

(A) REFUND OF TAX PREVIOUSLY IMPOSED.—In the case of any tax imposed by section 4661 of the Internal Revenue Code of 1954 on the sale or use of xylene before October 1, 1985, such tax (including interest, additions to tax, and additional amounts) shall not be assessed, and if assessed, the assessment shall be abated, and if collected shall be credited or refunded (with interest) as an overpayment.

(B) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of subparagraph (A) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

(C) XYLENE TO INCLUDE ISOMERS.—For purposes of this paragraph, the term "xylene" shall include any isomer of xylene whether or not separated.

(3) INVENTORY EXCHANGES.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by subsection (g) shall apply as if included in the amendments made by section 211 of the Hazardous Substance Response Revenue Act of 1980.

(B) RECIPIENT MUST AGREE TO TREATMENT AS MANUFACTURER.—In the case of any inventory exchange before January 1, 1986, the amendment made by subsection (g) shall apply only if the person receiving the chemical from the

manufacturer, producer, or importer in the exchange agrees to be treated as the manufacturer, producer, or importer of such chemical for purposes of subchapter B of chapter 38 of the Internal Revenue Code of 1954.

(C) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any inventory exchange before January 1, 1986, the amendment made by subsection (g) shall not apply if the manufacturer, producer, or importer treated such exchange as a sale for purposes of section 4661 of such Code and paid the tax imposed by such section.

(D) REGISTRATION REQUIREMENTS.—Section 4662(c)(2)(B) of such Code (as added by subsection (g)) shall apply to exchanges made after December 31, 1985.

SEC. 514. REPEAL OF POST-CLOSURE TAX AND TRUST FUND.

(a) REPEAL OF TAX.—

(1) Subchapter C of chapter 38 of the Internal Revenue Code of 1954 (relating to tax on hazardous wastes) is hereby repealed.

(2) The table of subchapters for such chapter 38 is amended by striking out the item relating to subchapter C.

(b) Repeal of Trust Fund.—Section 232 of the Hazardous Substance Response Revenue Act of 1980 is hereby repealed.

(c) Effective Date.—The amendments made by this section shall take effect on October 1, 1983.

SEC. 515. WASTE MANAGEMENT TAX.

(a) General Rule.—Chapter 38 of the Internal Revenue Code of 1954 (as amended by section 514 of this Act) is amended by adding after subchapter B the following new subchapter:

"Subchapter C—Hazardous Waste Management Tax

"Sec. 4671. Waste management tax.
"Sec. 4672. Exemptions; reduction of tax where prior taxable event.
"Sec. 4673. Special rules for waste water treatment, incineration, etc.
"Sec. 4674. Backup tax on generator.
"Sec. 4675. Definitions and special rules.

"SEC. 4671. WASTE MANAGEMENT TAX.

"(a) Imposition of Tax.—There is hereby imposed a tax on—

"(1) the receipt of hazardous waste at a qualified hazardous waste management unit,

"(2) the receipt of hazardous waste for transport from the United States for the purpose of ocean disposal, and

"(3) the exportation of hazardous waste from the United States.

"(b) Amount of Tax.—

"(1) In general.—The amount of the tax imposed by subsection (a) with respect to each ton of hazardous waste shall be determined in accordance with the following table:

	If the taxable event is:	
	Land Disposal	*Any Other Taxable Event*
"For calendar year:	*The tax per ton is:*	
1986	*$37.00*	*$4.15*
1987	*39.00*	*4.15*
1988	*42.00*	*4.15*
1989	*44.00*	*4.15*
1990	*47.00*	*4.15.*

"(2) Definitions relating to amount of tax.—For definition of—

"(A) hazardous waste, see section 4675(a)(1), and

"(B) land disposal and any other taxable event, see section 4675(a)(5).

"(c) Liability for Tax.—

"(1) Waste received at management units.—The tax imposed by subsection (a)(1) shall be paid by the owner or operator of the qualified hazardous waste management unit.

"(2) Waste received for transport from the United States.—The tax imposed by subsection (a)(2) shall be paid by the person holding the permit

issued for transport for ocean disposal under section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972.

"(3) WASTE EXPORTED.—The tax imposed by subsection (a)(3) shall be paid by the exporter.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1990.

"SEC. 4672. EXEMPTIONS; REDUCTION OF TAX WHERE PRIOR TAXABLE EVENT.

"(a) EXEMPTION FOR CERTAIN REMOVAL AND REMEDIAL ACTIONS, ETC.—The tax imposed by section 4671 shall not apply to the receipt or export of hazardous waste pursuant to—

"(1) a corrective action specified in—

"(A) an initial or final order, or

"(B) a proposed or final permit,

issued by the Administrator under the Solid Waste Disposal Act or a State under a hazardous waste program authorized under section 3006 of such Act,

"(2) a proposed or final closure plan approved by the Administrator or such a State,

"(3) a removal or remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 which has been selected or approved by the Administrator, or

"(4) an action to correct an emergency situation arising from a product spill which is certified by the Administrator to the Secretary as carrying out the purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

"(b) EXEMPTION FOR WASTE RECEIVED AT ANY FEDERAL FACILITY.—The tax imposed by section 4671 shall not apply to any hazardous waste received at any facility owned by the United States.

"(c) REDUCTION IN TAX WHERE PRIOR TAXABLE EVENT.—

"(1) IN GENERAL.—If—

"(A) tax under section 4671 or 4674 was paid with respect to any hazardous waste, and

"(B) tax under section 4671 is subsequently imposed on such waste (hereinafter in this subsection referred to as the 'later taxable event'),

then the tax under section 4671 on the later taxable event shall be reduced by the amount determined under paragraph (2).

"(2) AMOUNT OF REDUCTION.—The amount of the reduction determined under this paragraph is the product of—

(A) the weight of hazardous waste involved in the later taxable event, multiplied by

"(B) the lesser of—

"(i) the highest rate of tax paid under section 4671 or 4674 with respect to any prior taxable event involving such waste (determined without regard to this subsection), or

"(ii) the rate of tax imposed by section 4671 with respect to the later taxable event (as so determined).

"SEC. 4673. SPECIAL RULES FOR WASTE WATER TREATMENT, INCINERATION, ETC.

"(a) EXEMPTION FOR WASTE RECEIVED AT CERTAIN WASTE WATER TREATMENT UNITS.—The tax imposed by section 4671 shall not apply to hazardous waste received at any waste water treatment unit.

"(b) INCINERATION, ETC., WITHIN 90 DAYS OF RECEIPT.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—

"(A) tax under section 4671 was paid with respect to the receipt of any hazardous waste at any qualified hazardous waste management unit or for transport described in section 4671(a)(2), and

"(B) such waste is incinerated on land (or the equivalent of incineration on land) by any person within 90 days after the date of the first receipt referred to in subparagraph (A),

then the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4671.

"(2) EQUIVALENT OF INCINERATION.—For purposes of subparagraph (A), a method, technique, or process shall be treated as the equivalent of incineration on land if—

"(A) such method, technique, or process meets detailed performance standards established by the Environmental Protection Agency, and

"(B) such standards require a destruction and removal efficiency for the hazardous waste involved at least equivalent to the destruction and removal efficiency applicable to incineration on land.

"(c) QUALIFIED CHEMICAL FUELS OR SOLVENTS.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—

"(A) tax under section 4671 was paid with respect to any hazardous waste,

"(B) such waste is used by any person in the production of any qualified chemical fuel or solvent, and

"(C) such fuel or solvent is by such person sold for use or used in any industrial or commercial use,

then the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4671.

"(2) QUALIFIED CHEMICAL FUEL OR SOLVENT.—For purposes of subparagraph (A), the term 'qualified chemical fuel or solvent' means any chemical or solvent which is determined by the Administrator as not being a hazardous waste.

"(d) RECYCLING OF BATTERIES.—Under regulations prescribed by the Secretary, if—

"(1) tax under section 4671 was paid with respect to the receipt of any battery at a qualified hazardous waste management unit, and

"(2) the recycling of such battery begins at such a unit by any person within 90 days after the date of the

first receipt of such battery at any qualified hazardous waste management unit,

then the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4671.

"(e) TAX TO APPLY WHILE CORRECTIVE ACTION NOT COMPLETED.—

"(1) IN GENERAL.—The exemption provided by subsection (a) shall not apply (and no credit or refund shall be allowed under this section) with respect to any activity conducted at a facility (or part thereof) during the period that required corrective action remains uncompleted with respect to such facility (or part).

"(2) REQUIRED CORRECTIVE ACTION.—For purposes of paragraph (1), required corrective action shall be treated as uncompleted during the period—

"(A) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, and

"(B) ending on the date the Administrator or such State (as the case may be) certifies to the

Secretary that such corrective action has been completed.

"(3) Rate of tax with respect to waste water treatment.—The rate of tax imposed by section 4671 by reason of this subsection with respect to hazardous waste received at any waste water treatment unit shall be 15 cents per ton.

"SEC. 4674. BACKUP TAX ON GENERATOR.

"(a) Imposition of Tax.—There is hereby imposed a tax on each ton of hazardous waste which, as of the close of the 270-day period beginning on the day after the day on which such waste was generated, has not been—

"(1) received at a qualified hazardous waste management unit,

"(2) received for transport from the United States for the purpose of ocean disposal, or

"(3) exported from the United States.

"(b) Rate of Tax.—The rate of the tax imposed by subsection (a) shall be the rate of tax applicable to land disposal under section 4671 at the end of the 270-day period described in subsection (a).

"(c) Liability for Tax.—The tax imposed by subsection (a) shall be paid by the generator of the hazardous waste.

"(d) Exemptions.—

"(1) Small generators.—The tax imposed by subsection (a) shall not apply to hazardous waste generated during any month if the generator of such waste does not generate more than 100 kilograms of hazardous waste during such month.

"(2) WASTE LEGALLY DISPOSED OF IN PUBLICLY OWNED TREATMENT WORKS.—The tax imposed by subsection (a) shall not apply to hazardous waste disposed of in any publicly owned treatment works if the disposal of such waste is not in violation of Federal, State, or local law.

"(3) OTHER EXEMPTIONS TO APPLY.—The exemptions provided by subsections (a) and (b) of section 4672 shall apply to the tax imposed by subsection (a).

"(4) EXEMPTIONS UNDER REGULATIONS; APPLICATION OF LOWER RATE.—The Secretary may prescribe regulations which provide exemptions from the tax imposed by subsection (a) (or the application of a lower rate) which are not inconsistent with the purposes of this section.

"(e) GENERATOR.—For purposes of this section, the term 'generator' means the person whose act or process produces the hazardous waste.

"(f) TERMINATION.—No tax shall be imposed by this section on waste generated after September 30, 1990.

"SEC. 4675. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) HAZARDOUS WASTE.—The term 'hazardous waste' means any waste which is listed or identified as of the date of the enactment of the Superfund Revenue Act of 1985 under section 3001 of the Solid Waste Disposal Act. Rainwater shall not be treated as hazardous waste unless mixed with hazardous waste (as defined in the preceding sentence).

"(2) QUALIFIED HAZARDOUS WASTE MANAGEMENT UNIT.—The term 'qualified hazardous waste management unit' means the specified area of land or structure—

"(A) which isolates the hazardous wastes within a qualified hazardous waste facility, and

"(B) which is subject to the requirements for obtaining interim status or a final permit under subtitle C of the Solid Waste Disposal Act.

"(3) QUALIFIED HAZARDOUS WASTE MANAGEMENT FACILITY.—The term 'qualified hazardous waste management facility' means any facility, as defined under subtitle C of the Solid Waste Disposal Act, which has received a permit or is accorded interim status under—

"(A) section 3005 of the Solid Waste Disposal Act, or

"(B) a State program authorized under section 3006 of such Act.

"(4) OCEAN DISPOSAL.—The term 'ocean disposal' means the incineration or dumping of hazardous waste over or into ocean waters or the waters described in section 101(b) of the Marine Protection, Research, and Sanctuaries Act of 1972, pursuant to section 102 of such Act.

"(5) DEFINITIONS RELATING TO AMOUNT OF TAX.—

"(A) LAND DISPOSAL.—The term 'land disposal' means a taxable event described in section 4671(a)(1) with respect to a qualified hazardous waste management unit which is a landfill, surface impoundment, waste pile, or land treatment unit.

"(B) LANDFILL, ETC.—For purposes of subparagraph (A), the terms 'landfill', 'surface impoundment', 'waste pile' and 'land treatment unit' have the respective meanings given such terms in regulations prescribed by the administrator pursuant to sections 3004 and 3005 of the Solid Waste Disposal Act.

"(C) OTHER TAXABLE EVENT.—The term 'any other taxable event' means—

"(i) a taxable event described in section 4671(a)(1) which is not land disposal, and

"(ii) a taxable event described in paragraph (2) or (3) of section 4671(a).

"(6) WASTE WATER TREATMENT UNIT.—The term 'waste water treatment unit' means any qualified hazardous waste management unit which is an integral and necessary part of a treatment system—

"(A) for which a permit is required under section 402 of the Clean Water Act,

"(B) which is subject to pretreatment standards under subsection (b) or (c) of section 307 of the Clean Water Act, or

"(C) which is a zero discharge treatment system—

"(i) which, if the system discharged into navigable waters, would comply with effluent limitation guidelines prescribed under paragraph (2) or (4) of section 304(b) of the Clean Water Act,

"(ii) which, if the system discharged into a publicly owned treatment works,

would comply with the pretreatment standards described in subparagraph (B), or

"(iii) if no such guidelines or standards have been prescribed, which employs biological treatment.

The term 'waste water treatment unit' shall not include any qualified hazardous waste management unit which receives for storage or final disposition concentrated treatment residues resulting from wastewater treatment.

"(7) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(8) UNITED STATES.—The term 'United States' has the meaning given such term by section 4612(a)(4).

"(9) TON.—The term 'ton' means 2,000 pounds.

"(10) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by this subchapter shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) TREATMENT OF CONTAINERS, ETC., WHICH ARE RELATED TO INJECTION UNITS.—For purposes of this subchapter—

"(1) any container, tank, or surface impoundment which, with respect to any hazardous waste, is used to

treat or store such waste before underground injection of such waste (whether or not the waste when injected is hazardous waste) into an injection well, and

"(2) the injection well into which such waste is injected,

shall be treated as a single hazardous waste management unit.

"(c) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by this subchapter."

(b) INFORMATION REPORTING REQUIREMENT.—

(1) IN GENERAL.—Subpart A of part III of subchapter A of chapter 61 of such Code is amended by inserting after section 6039D the following new section:

"SEC. 6039E. INFORMATION WITH RESPECT TO MANAGEMENT TAX ON HAZARDOUS WASTE.

"Each person on whom a tax is imposed under subchapter C of chapter 38 shall (at such time and in such manner as the Secretary may require) submit to the Secretary such information as the Secretary may require, including information which such person is required to provide the Administrator of the Environmental Protection Agency under the Solid Waste Disposal Act. To the extent provided

in regulations prescribed by the Secretary, the preceding sentence shall also apply to persons not described therein with respect to information which the Secretary determines is necessary or appropriate to the administration of such subchapter."

(2) PENALTY.—Subchapter B of chapter 68 of such Code (relating to assessable penalties) is amended by redesignating section 6708 (relating to mortgage credit certificates) as section 6709 and by adding at the end thereof the following new section:

"SEC. 6710. FAILURE TO PROVIDE INFORMATION WITH RESPECT TO MANAGEMENT TAX ON HAZARDOUS WASTE.

"(a) IN GENERAL.—Any person who fails to meet any requirement imposed by section 6039E shall pay a penalty of $100 for each day during which such failure continues, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection with respect to any failure shall not exceed $50,000.

"(b) PENALTY IN ADDITION TO OTHER PENALTIES.—The penalty imposed by this section shall be in addition to any other penalty provided by law."

(3) CONFORMING AMENDMENTS.—

(A) The table of sections for subpart A of part III of subchapter A of chapter 61 of such

Code is amended by inserting after the item relating to section 6039D the following new item:

"Sec. 6039E. Information with respect to management tax on hazardous waste."

(B) The table of sections for subchapter B of chapter 68 of such Code is amended by redesignating the item relating to mortgage credit certificates as section 6709 and by adding at the end thereof the following new item:

"Sec. 6710. Failure to provide information with respect to management tax on hazardous waste."

(c) PENALTY FOR NEGLIGENCE TO APPLY TO ENVIRONMENTAL TAXES.—Section 6653 of such Code (relating to failure to pay tax) is amended by adding at the end thereof the following new subsection:

"(i) NEGLIGENCE PENALTY TO APPLY TO ENVIRONMENTAL TAXES.—For purposes of applying paragraphs (1) and (2) of subsection (a), paragraph (1) of subsection (a) shall be treated as including a reference to underpayments (as defined in subsection (c)) of tax imposed by chapter 38 (relating to environmental taxes)."

(d) CLERICAL AMENDMENT.—The table of subchapters for chapter 38 of such Code is amended by adding after the item relating to subchapter B the following new item:

"SUBCHAPTER C. Hazardous waste management tax."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1986.

(2) BACKUP TAX ON GENERATOR.—Section 4674 of the Internal Revenue Code of 1954 (relating to backup tax on generator), as added by this section, shall apply to waste generated after December 31, 1986.

SEC. 516. TAX ON CERTAIN IMPORTED SUBSTANCES DERIVED FROM TAXABLE CHEMICALS.

(a) GENERAL RULE.—Chapter 38 of the Internal Revenue Code of 1954 is amended by adding after subchapter C the following new subchapter:

"Subchapter D—Tax on Certain Imported Substances

"Sec. 4677. Imposition of tax.
"Sec. 4678. Definitions and special rules.

"SEC. 4677. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable substance sold or used by the importer thereof.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amount of the tax imposed by subsection (a) with respect to any taxable substance shall be the amount of the tax which would have been imposed by section 4661 on the taxable chemicals or petroleum

used as materials or process fuel in the manufacture or production of such substance if such taxable chemicals or petroleum had been sold in the United States for use in the manufacture or production of such taxable substance.

"(2) RATE WHERE IMPORTER DOES NOT FURNISH INFORMATION TO SECRETARY.—If the importer does not furnish to the Secretary (at such time and in such manner as the Secretary shall prescribe) sufficient information to determine under paragraph (1) the amount of the tax imposed by subsection (a) on any taxable substance, the amount of the tax imposed on such taxable substance shall be 5 percent of the appraised value of such substance as of the time such substance was entered into the United States for consumption, use, or warehousing.

"(c) EXEMPTIONS FOR SUBSTANCES TAXED UNDER SECTIONS 4611 AND 4661.—No tax shall be imposed by this section on the sale or use of any substance if tax is imposed on such sale or use under section 4611 or 4661.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1990.

"SEC. 4678. DEFINITIONS AND SPECIAL RULES.

"(a) TAXABLE SUBSTANCE.—For purposes of this subchapter—

"(1) IN GENERAL.—The term 'taxable substance' means any substance which, at the time of sale or use by the importer, is listed as a taxable substance by the Secretary for purposes of this subchapter.

"(2) DETERMINATION OF SUBSTANCES ON LIST.—A substance shall be listed under paragraph (1) if—

"(A) the substance is contained in the list under paragraph (3), or

"(B) the Secretary determines, in consultation with the Administrator of the Environmental Protection Agency and the Commissioner of Customs, that such substance generally has more than 50 percent of its value derived (as materials or as process fuel) from taxable chemicals or petroleum (determined on the basis of the predominant method of production).

"(3) INITIAL LIST OF TAXABLE SUBSTANCES.—

Cumene
Styrene
Ammonium nitrate
Nickel oxide
Isopropyl alcohol
Ethylene glycol
Vinyl chloride
Polyethylene resins, total
Polybutadiene
Styrene-butadiene, latex
Styrene-butadiene, snpf
Synthetic rubber, not containing fillers

Urea
Ferronickel
Ferrochromium nov 3 pct
Ferrochrome ov 3 pct carbon
Unwrought nickel
Nickel waste and scrap
Wrought nickel rods and wire
Nickel powders
Phenolic resins
Polyvinylchloride resins
Polystyrene resins and copolymers
Ethyl alcohol for nonbeverage use
Methylene chloride
Polypropylene
Propylene glycol
Formaldehyde
Acetone
Propylene oxide
Polypropylene resins
Ethylene oxide
Ethylene dichloride
Cyclohexane
Isophthalic acid
Maleic anhydride
Phthalic anhydride
Ethyl methyl ketone
Chloroform
Carbon tetrachloride
Chromic acid
Hydrogen peroxide
Polystyrene homopolymer resins
Melamine
Acrylic and methacrylic acid resins
Vinyl resins
Vinyl resins, NSPF.

"(4) MODIFICATIONS TO LIST.—The Secretary may add or remove substances from the list under paragraph (2) (including items listed by reason of paragraph (3)) as necessary to carry out the purposes of this subchapter.

"(b) OTHER DEFINITIONS.—For purposes of this subchapter—

"(1) IMPORTER.—The term 'importer' means the person entering the taxable substance for consumption, use, or warehousing.

"(2) TAXABLE CHEMICALS; UNITED STATES.—The terms 'taxable chemical' and 'United States' have the respective meanings given such terms by section 4662(a).

"(c) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4677."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 38 of such Code is amended by adding after the item relating to subchapter C the following new item:

"SUBCHAPTER D. Tax on certain imported substances."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 517. HAZARDOUS SUBSTANCE SUPERFUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9504 the following new section:

"SEC. 9505. HAZARDOUS SUBSTANCE SUPERFUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to

be known as the 'Hazardous Substance Superfund' (hereinafter in this section referred to as the 'Superfund'), consisting of such amounts as may be—

"(1) appropriated to the Superfund as provided in this section,

"(2) appropriated to the Superfund pursuant to section 517(b) of the Superfund Revenue Act of 1985, or

"(3) credited to the Superfund as provided in section 9602(b).

"(b) TRANSFERS TO SUPERFUND.—There are hereby appropriated to the Superfund amounts equivalent to—

"(1) the taxes received in the Treasury under section 4611, 4661, 4671, 4674, or 4677 (relating to environmental taxes),

"(2) amounts recovered on behalf of the Superfund under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this section referred to as 'CERCLA'),

"(3) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

"(4) penalties assessed under title I of CERCLA, and

"(5) punitive damages under section 107(c)(3) of CERCLA.

"(c) Expenditures From Superfund.—

"(1) In general.—Amounts in the Superfund shall be available, as provided in appropriation Acts, only for purposes of making expenditures—

"(A) to carry out the purposes of paragraphs (1), (2), (4), and (5) of section 111(a) of CERCLA as in effect on the date of the enactment of the Superfund Amendments of 1985, or

"(B) hereafter authorized by a law which authorizes the expenditure out of the Superfund for a general purpose covered by paragraphs (1), (2), (4), and (5) of such section 111(a) (as so in effect).

"(2) Exception for certain transfers, etc., of hazardous subtances.—Amounts in the Superfund shall not be avaiable for any transfer or disposal which could not be made but for section 118(d) of the Superfund Amendments of 1985, as in effect on the date of the enactment thereof.

"(d) Authority to Borrow.—

"(1) In general.—There are authorized to be appropriated to the Superfund, as repayable advances,

such sums as may be necessary to carry out the purposes of the Superfund.

"(2) REPAYMENT OF ADVANCES.—

"(A) IN GENERAL.—Advances made pursuant to this subsection shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Superfund.

"(B) FINAL REPAYMENT.—No advance shall be made to the Superfund after September 30, 1990, and all advances to such Fund shall be repaid on or before such date.

"(C) RATE OF INTEREST.—Interest on advances made pursuant to this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

"(e) LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Superfund may be paid only out of the Superfund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in CERCLA or the Superfund Amendments of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Superfund.

"(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Superfund has insufficient funds to pay all of the claims payable out of the Superfund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined."

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund for fiscal year—

(1) 1986, $316,600,000,

(2) 1987, $316,600,000,

(3) 1988, $316,600,000,

(4) 1989, $316,600,000, and

(5) 1990, $316,600,000,

plus for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Act of 1980, as in effect before its repeal) as has not been appropriated before the beginning of the fiscal year involved.

(c) CONFORMING AMENDMENTS.—

(1) Subtitle B of the Hazardous Substance Response Revenue Act of 1980 (relating to establishment of Hazardous Substance Response Trust Fund) is hereby repealed.

(2) Paragraph (11) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"(11) 'Fund' or 'Trust Fund' means the Hazardous Substance Superfund established by section 9505 of the Internal Revenue Code of 1954;".

(d) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9504 the following new item:

"Sec. 9505. Hazardous Substance Superfund."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on November 1, 1985.

(2) SUPERFUND TREATED AS CONTINUATION OF OLD TRUST FUND.—The Hazardous Substance Superfund established by the amendments made by this section shall be treated for all purposes of law as a continuation of the Hazardous Substance Response Trust Fund established by section 221 of the Hazardous Substance Response Revenue Act of 1980. Any reference in any law to the Hazardous Substance Response Trust Fund established by such section 221 shall be deemed to include (wherever appropriate) a reference to the Hazardous Substance Superfund established by the amendments made by this section.

PART II—LEAKING UNDERGROUND STORAGE TANK TRUST FUND AND ITS REVENUE SOURCES

SEC. 521. ADDITIONAL TAXES ON GASOLINE, DIESEL FUEL, SPECIAL MOTOR FUELS, FUELS USED IN AVIATION, AND FUELS USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.

(a) GENERAL RULE.—

(1) GASOLINE.—Section 4081 of the Internal Revenue Code of 1954 (relating to imposition of tax on gasoline) is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a) TAX TO FUND HIGHWAY PROGRAM.—

"(1) In general.—There is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 9 cents a gallon.

"(2) Termination.—On and after October 1, 1988, the tax imposed by paragraph (1) shall not apply.

"(b) Additional Tax To Fund Leaking Underground Storage Tank Trust Fund.—

"(1) In general.—In addition to the tax imposed by subsection (a), there is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 0.2 cents a gallon.

"(2) Termination.—

"(A) In general.—The tax imposed by paragraph (1) shall not apply after the earlier of—

"(i) September 30, 1990, or

"(ii) the last day of the termination month.

"(B) Termination month.—For purposes of subparagraph (A), the termination month is the 1st month as of the close of which the Secretary estimates that the net revenues from the taxes imposed by paragraph (1) and section 4041(d) are at least $850,000,000.

"(C) NET REVENUES.—For purposes of subparagraph (B), the term 'net revenues' means the excess of gross revenues over amounts payable by reason of section 9506(c)(2) (relating to transfer from Leaking Underground Storage Tank Trust Fund for certain repayments and credits)."

(2) DIESEL AND SPECIAL MOTOR FUELS; FUELS USED IN AVIATION.—Section 4041 of such Code (relating to tax on special fuels) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) ADDITIONAL TAXES TO FUND LEAKING UNDERGROUND STORAGE TANK TRUST FUND.—

"(1) LIQUIDS OTHER THAN GASOLINE USED IN MOTOR VEHICLES, MOTORBOATS, OR TRAINS.—In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.2 cents a gallon on benzol, benzene, naphtha, liquefied petroleum gas, casing head and natural gasoline, or any other liquid (other than kerosene, gas oil, or fuel oil, or any product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a motor vehicle, motorboat, or train for use as a fuel in such motor vehicle, motorboat, or train, or

"(E) used by any person as a fuel in a motor vehicle, motorboat, or train unless there was a taxable sale of such liquid under subparagraph (A).

"(2) LIQUIDS USED IN AVIATION.—In addition to the taxes imposed by subsection (c) and section 4081, there is hereby imposed a tax of 0.2 cents a gallon on any liquid—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft, or

"(B) used by any person as a fuel in an aircraft unless there was a taxable sale of such liquid under subparagraph (A).

The tax imposed by this paragraph shall not apply to any product taxable under section 4081 which is used as a fuel in an aircraft other than in noncommercial aviation.

"(3) TERMINATION.—The taxes imposed by this subsection shall not apply during any period during which no tax is imposed by section 4081(b)."

(3) FUEL USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.—Subsection (b) of section 4042 of such Code (relating to amount of tax on

fuel used in commercial transportation on inland waterways) is amended to read as follows:

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by subsection (a) is the sum of—

"(A) the Inland Waterways Trust Fund financing rate, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Inland Waterways Trust Fund financing rate is 10 cents a gallon, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.2 cents a gallon.

"(3) EXCEPTION FOR FUEL TAXED UNDER SECTION 4041(d).—The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply to the use of any fuel if tax under section 4041(d) was imposed on the sale of such fuel or is imposed on such use.

"(4) TERMINATION OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply

during any period during which no tax is imposed by section 4081(b)."

(b) ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND, AIRPORT AND AIRWAY TRUST FUND, AND INLAND WATERWAYS TRUST FUND.—

(1) HIGHWAY TRUST FUND.—

(A) IN GENERAL.—Subsection (b) of section 9503 of such Code (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes) is amended by adding at the end thereof the following new paragraph:

"(4) CERTAIN ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.—For purposes of paragraphs (1) and (2), the taxes imposed by sections 4041(d) and 4081(b) shall not be taken into account."

(B) CONFORMING AMENDMENT.—Subparagraph (D) of section 9503(c)(4) of such Code (defining motorboat fuel taxes) is amended by striking out "section 4081" and inserting in lieu thereof "section 4081(a)".

(2) AIRPORT AND AIRWAY TRUST FUND.—Subsection (b) of section 9502 of such Code (relating to transfer to Airport and Airway Trust Fund of amounts equivalent to certain taxes) is amended—

(A) by striking out "subsections (c) and (d) of section 4041" in paragraph (1) and inserting in lieu thereof "subsections (c) and (e) of section 4041", and

(B) by striking out "section 4081" in paragraph (2) and inserting in lieu thereof "section 4081(a)".

(3) INLAND WATERWAYS TRUST FUND.—Paragraph (1) of section 203(b) of the Inland Waterways Revenue Act of 1978 is amended by adding at the end thereof the following new sentence: "The preceding sentence shall apply only to so much of such taxes as are attributable to the Inland Waterways Trust Fund financing rate under section 4042(b)."

(c) REPAYMENTS FOR GASOLINE USED ON FARMS, ETC.—

(1) GASOLINE USED ON FARMS.—Subsection (h) of section 6420 of such Code (relating to termination) is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081(b), this section".

(2) GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES OR BY LOCAL TRANSIT SYSTEMS.—

(A) TERMINATION NOT TO APPLY TO ADDITIONAL 0.2 CENT TAX.—Subsection (h) of section

6421 of such Code (relating to effective date) is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081(b), this section".

(B) REPAYMENT OF ADDITIONAL TAX FOR OFF-HIGHWAY BUSINESS USE TO APPLY ONLY TO CERTAIN VESSELS.—Subsection (e) of section 6421 of such Code is amended by adding at the end thereof the following new paragraph:

"(4) SECTION NOT TO APPLY TO CERTAIN OFF-HIGHWAY BUSINESS USES WITH RESPECT TO THE TAX IMPOSED BY SECTION 4081(b).—This section shall not apply with respect to the tax imposed by section 4081(b) on gasoline used in any off-highway business use other than use in a vessel employed in the fisheries or in the whaling business."

(3) FUELS USED FOR NONTAXABLE PURPOSES.—

(A) Subsection (m) of section 6427 of such Code (relating to termination) is amended by striking out "Subsections" and inserting in lieu thereof "Except with respect to taxes imposed by sections 4041(d) and 4081(b), subsections".

(B) Section 6427 of such Code is amended by redesignating subsection (n) as subsection (o)

and by inserting after subsection (m) the following new subsection:

"(n) PAYMENTS FOR TAXES IMPOSED BY SECTION 4041(d).—For purposes of subsections (a), (b), and (c), the taxes imposed by section 4041(d) shall be treated as imposed by section 4041(a)."

(C) Paragraph (1) of section 6427(f) of such Code (relating to gasoline used to produce certain alcohol fuels) is amended by striking out "section 4081" and inserting in lieu thereof "section 4081(a)".

(d) CONTINUATION OF CERTAIN EXEMPTIONS FROM ADDITIONAL TAXES, ETC.—

(1) Subsection (b) of section 4041 of such Code (relating to exemption for off-highway business use; exemption for qualified methanol and ethanol fuel) is amended by adding at the end thereof the following new paragraph:

"(3) COORDINATION WITH TAXES IMPOSED BY SUBSECTION (d).—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, rules similar to the rules of paragraphs (1) and (2) shall apply with respect to the taxes imposed by subsection (d).

"(B) LIMITATION ON EXEMPTION FOR OFF-HIGHWAY BUSINESS USE.—For purposes of subparagraph (A), paragraph (1) shall apply only with respect to off-highway business use in a vessel employed in the fisheries or in the whaling business.

"(C) TERMINATION NOT TO APPLY.—Subparagraph (C) of paragraph (2) shall not apply with respect to the taxes imposed by subsection (d)."

(2) Paragraph (3) of section 4041(f) of such Code (relating to exemption for farm use) is amended by striking out "On and after" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), on and after".

(3) The last sentence of section 4041(g) of such Code (relating to other exemptions) is amended by striking out "Paragraphs" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), paragraphs".

(4) The last sentence of section 4221(a) of such Code (relating to certain tax-free sales) is amended by striking out "4081" and inserting in lieu thereof "4081(a)".

(5) Paragraph (2) of section 6416(b) of such Code is amended by inserting "or under paragraph (1)(A) or (2)(A) of section 4041(d)" after "section 4041(a)".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on November 1, 1985.

SEC. 522. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9505 the following new section:

"SEC. 9506. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Leaking Underground Storage Tank Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Leaking Underground Storage Tank Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under sections 4041(d) and 4081(b) (relating to additional taxes on motor fuels and gasoline),

"(2) taxes received in the Treasury under section 4042 to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4042(b), and

"(3) amounts collected under section 9003(h)(6) of the Solid Waste Disposal Act.

"(c) EXPENDITURES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), amounts in the Leaking Underground Storage Tank Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures to carry out section 9003(h) of the Solid Waste Disposal Act as in effect on the date of the enactment of the Superfund Amendments of 1985.

"(2) TRANSFERS FROM TRUST FUND FOR CERTAIN REPAYMENTS AND CREDITS.—

"(A) IN GENERAL.—The Secretary shall pay from time to time from the Leaking Underground Storage Tank Trust Fund into the general fund of the Treasury amounts equivalent to—

"(i) amounts paid under—

"(I) section 6420 (relating to amounts paid in respect of gasoline used on farms),

"(II) section 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems), and

"(III) section 6427 (relating to fuels not used for taxable purposes), and

"(ii) credits allowed under section 34, with respect to the taxes imposed by sections 4041(d) and 4081(b).

"(B) TRANSFERS BASED ON ESTIMATES.—Transfers under subparagraph (A) shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(d) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Leaking Underground Storage Tank Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

or the Superfund Amendments of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Leaking Underground Storage Tank Trust Fund.

"(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Leaking Underground Storage Tank Trust Fund has insufficient funds to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9505 the following new item:

"Sec. 9506. Leaking Underground Storage Tank Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on November 1, 1985.

PART III—OIL SPILL LIABILITY TRUST FUND AND ITS REVENUE SOURCES

SEC. 531. INCREASE IN ENVIRONMENTAL TAX ON PETROLEUM.

(a) IN GENERAL.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum), as amended by section 511

of this Act, are each amended by striking out "of 11.9 cents a barrel" and inserting in lieu thereof "at the rate specified in subsection (c)".

(b) INCREASE IN TAX.—Section 4611 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the taxes imposed by this section is the sum of—

"(A) the Hazardous Substance Superfund financing rate, and

"(B) the Oil Spill Liability Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Hazardous Substance Superfund financing rate is 11.9 cents a barrel, and

"(B) the Oil Spill Liability Trust Fund financing rate is 1.3 cents a barrel."

(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—Section 4612 of such Code (relating to definitions and special rules) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) Credit Against Portion of Tax Attributable to Oil Spill Rate.—There shall be allowed as a credit against so much of the tax imposed by section 4611 as is attributable to the oil spill rate for any period the excess of the aggregate amount paid by the taxpayer into the Deepwater Port Liability Trust Fund and the Offshore Oil Pollution Compensation Fund over the amount of such payments taken into account under this subsection for all prior periods."

(d) Conforming Amendments.—

(1) Subsection (e) of section 4611 of such Code (relating to application of taxes), as redesignated by subsection (b), is amended to read as follows:

"(e) Application of Taxes.—

"(1) Superfund rate.—The Hazardous Substance Superfund financing rate under subsection (c) shall apply after October 31, 1985, and before October 1, 1990.

"(2) Oil spill rate.—The Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after December 31, 1985, and before October 1, 1990."

(2) Subsection (d) of section 4661 of such Code (relating to termination of tax on certain chemicals) is amended to read as follows:

"(d) APPLICATION OF TAXES.—The tax imposed by this section shall apply after October 31, 1985, and before October 1, 1990."

(3) Subsection (b) of section 9505 of such Code (relating to transfers to Superfund) is amended by adding at the end thereof the following:

"In the case of the tax imposed by section 4611, paragraph (1) shall apply only to so much of such tax as is attributable to the Superfund financing rate under section 4611(c)."

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1986.

SEC. 532. OIL SPILL LIABILITY TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9506 the following new section:

"SEC. 9507. OIL SPILL LIABILITY TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Oil Spill Liability Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Oil Spill Liability Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under section 4611 (relating to environmental tax on petroleum) to the extent attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c),

"(2) amounts recovered, collected, or received under subtitle A of the Comprehensive Oil Pollution Liability and Compensation Act,

"(3) amounts remaining on the date of the enactment of this section in the Deep Water Port Liability Fund established by section 18(f) of the Deep Water Port Act of 1974,

"(4) amounts remaining on the date of the enactment of this section in the Offshore Oil Pollution Compensation Fund established under section 302 of the Outer Continental Shelf Lands Act Amendments of 1978, and

"(5) amounts credited to such trust fund under section 311(s) of the Federal Water Pollution Control Act.

"(c) EXPENDITURES.—

"(1) GENERAL EXPENDITURE PURPOSES.—

"(A) In general.—Amounts in the Oil Spill Liability Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures for—

"(i) the payment of removal costs described in section 401(24)(A) of the Comprehensive Oil Pollution Liability and Compensation Act,

"(ii) the payment of claims under the Comprehensive Oil Pollution Liability and Compensation Act for damage which is not otherwise compensated,

"(iii) carrying out subsections (c), (d), (i), and (l) of section 311 of the Federal Water Pollution Control Act with respect to any discharge of oil (as defined in such section),

"(iv) carrying out section 5 of the Intervention on the High Seas Act relating to oil pollution or the substantial threat of oil pollution,

"(v) the payment of all expenses of administration incurred by the Federal Government under the Comprehensive Oil

Pollution Liability and Compensation Act, and

"(vi) the payment of contributions to the International Fund under section 464 of such Act.

"(B) SPECIAL RULES.—

"(i) PAYMENTS TO GOVERNMENTS ONLY FOR REMOVAL COSTS.—Amounts shall be available under subparagraph (A) for payments to any government only for removal costs and administrative expenses related to removal costs.

"(ii) RESTRICTIONS ON CONTRIBUTIONS TO INTERNATIONAL FUND.—Under regulations prescribed by the Secretary, amounts shall be available under subparagraph (A) with respect to any contribution to the International Fund only in proportion to the portion of such fund used for a purpose for which amounts may be paid from the Oil Spill Liability Trust Fund.

"(iii) REFERENCES TO OTHER ACTS.—Any reference in any clause of subparagraph (A) to any Act shall be treated as

a reference to such Act as in effect on the date of the enactment of this section.

"(2) LIMITATIONS ON EXPENDITURES.—

"(A) $200,000,000 PER INCIDENT.—The maximum amount which may be paid from the Oil Spill Liability Trust Fund with respect to any single incident shall not exceed $200,000,000.

"(B) $30,000,000 MINIMUM BALANCE.—Except in the case of payments described in paragraph (1)(A), a payment may be made from such Trust Fund only if the amount in such Trust Fund after such payment will not be less than $30,000,000.

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Oil Spill Liability Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

"(2) LIMITATION ON AMOUNT OUTSTANDING.—The maximum aggregate amount of repayable advances to the Oil Spill Liability Trust Fund which is outstanding at any one time shall not exceed $300,000,000.

"(3) REPAYMENT OF ADVANCES.—Rules similar to the rules of paragraph (2) of section 9505(d) shall apply for purposes of this subsection.

"(e) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Oil Spill Liability Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Oil Pollution Liability and Compensation Act or the Superfund Amendments of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Oil Spill Liability Trust Fund.

"(f) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Oil Spill Liability Trust Fund has insufficient funds (or is unable by reason of subsection (c)(2)) to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under such subsections, be paid in full in the order in which they were finally determined."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by

adding after the item relating to section 9506 the following new item:

"Sec. 9507. Oil Spill Liability Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1986.

PART IV—STUDIES

SEC. 541. STUDY OF IMPACT OF WASTE MANAGEMENT TAX ON DOMESTIC MANUFACTURERS.

(a) GENERAL RULE.—The Secretary of the Treasury or his delegate shall conduct a study on the effects of the tax imposed by section 4671 of the Internal Revenue Code of 1954 on the ability of domestic manufacturers to compete in international trade.

(b) REPORT.—Not later than July 1, 1986, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under subsection (a). Such report shall include recommendations to minimize the trade impact of such tax and there shall be considered, in making such recommendations, a waste management tax export credit, an import equalization fee, and a maximum amount of tax with respect to hazardous waste generated by economically distressed industries.

SEC. 542. STUDY OF LEAD POISONING.

(a) IN GENERAL.—The Administrator of the Agency for Toxic Substances and Disease Registry shall, in consultation with the Administrator of the Environmental Protection Agency and other officials as appropriate, not later than March 1, 1986, submit to the Committee on Environment and Public Works, and the Committee on Finance, of the Senate and the Committee on Energy and Commerce, and the Committee on Ways and Means, of the House of Representatives, a report on the nature and extent of lead poisoning in children from environmental sources. Such report shall include, at a minimum, the following information:

(1) an estimate of the total number of children, arrayed according to Standard Metropolitan Statistical Area or other appropriate geographic unit, exposed to environmental sources of lead at concentrations sufficient to cause adverse health effects;

(2) an estimate of the total number of children exposed to environmental sources of lead arrayed according to source or source types;

(3) a statement of the long term consequences for public health of unabated exposures to environmental sources of lead, including (but not limited to) diminution in intelligence and increases in morbidity and mortality; and

(4) methods and alternatives available for reducing exposures of children to environmental sources of lead.

(b) EVALUATION OF SPECIFIC SITES.—Such report shall also score and evaluate specific sites at which children are known to be exposed to environmental sources of lead due to releases, utilizing the Hazard Ranking system of the National Priorities List.

(c) AUTHORIZATION FROM SUPERFUND.—There are authorized to be appropriated from the Hazardous Substance Superfund such sums as may be necessary to prepare and submit the report required by this section.

PART V—COORDINATION WITH OTHER PROVISIONS OF THIS ACT

SEC. 551. COORDINATION.

(a) IN GENERAL.—Notwithstanding any provision of this Act not contained in this title, any provision of this Act (not contained in this title) which—

(1) imposes any tax, premium, or fee,

(2) establishes any trust fund, or

(3) authorizes amounts to be expended from any trust fund which are not also authorized by this title,

shall have no force or effect.

(b) EXCEPTION FOR PAYMENTS FROM TRANS-ALASKA PIPELINE LIABILITY FUND.—Subsection (a)

shall not apply to amounts rebated to owners of oil in accordance with section 442(a) of the Comprehensive Oil Pollution Liability and Compensation Act.

In lieu of the matter inserted by the amendment of the Senate to the title of the bill, insert: "An Act to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.".

Attest:

Clerk.